

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 22
July 26, 2013
UNOFFICIAL DRAFT - 7/26/13 Morning Session

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Min-U-Script® with Word Index

1 VOLUME XXII

2 IN THE UNITED STATES ARMY

3
4 UNITED STATES

5 VS.

6 MANNING, Bradley E., Pfc.

COURT-MARTIAL

7 U.S. Army, xxxx-xx-9504

8 Headquarters and Headquarters Company,

9 U.S. Army Garrison,

10 Joint Base Myer-Henderson Hall,

11 Fort Myer, VA 22211

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16 The Hearing in the above-entitled matter
17 was continued on Friday, July 26, 2013, at 9:30 a.m.,
18 at Fort Meade, Maryland, before the Honorable Colonel
19 Denise Lind, Judge.

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DISCLAIMER

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12 This unedited, uncertified draft transcript
13 may contain court reporting outlines that are not
14 translated, notes made by the reporter for editing
15 purposes, misspelled terms and names, word combinations
16 that do not make sense, and missing testimony or
17 colloquy due to being inaudible by the reporter.

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1 APPEARANCES:

2

3 ON BEHALF OF GOVERNMENT:

4

MAJOR ASHDEN FEIN

5

CAPTAIN JOSEPH MORROW

6

CAPTAIN ANGEL OVERGAARD

7

CAPTAIN HUNTER WHYTE

8

CAPTAIN ALEXANDER von Elten

9

10 ON BEHALF OF ACCUSED:

11

DAVID COOMBS

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CAPTAIN JOSHUA TOOMAN

13

MAJOR THOMAS HURLEY

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PROCEEDINGS

2 THE COURT: Is there anything else we need
3 to address before we proceed?

4 MR. COOMBS: Your Honor, before I really
5 begin my closing argument I want to address a couple of
6 the statements that the Government highlighted. And I
7 think what they chose to highlight was always just a
8 snippet; it wasn't the entire statement.

9 Almost, if you would, use a role of
10 completeness, they start off with this. They actually
11 used this a few times, both in their opening and their
12 closing, making it seem as if Pfc. Manning is saying,
13 well, if you have all this access, what would you do
14 with that? Would you get all this stuff to people,
15 kind of a nefarious goal in mind is what they are
16 trying to say.

When we actually look at, and this is later
within PE 30, and Defense would ask you to read all of
PE 30. I'm sure the Government is going to cherrypick
some more when they do the rebuttal argument and take
statements out of context.

1 He talks about the same thing here. When
2 you read the rest of it, you see what he's concerned
3 about, saying incredible things, awful things, things
4 that belong in the public domain and not in some server
5 stored in a dark room. What would you do then?

6 That is a whistleblower. That is somebody
7 who wants to inform the American public. Then this is
8 kind of a longer section and snippet. Again, it's
9 going to be important that you read all of PE 30.
10 There are a few things that the Government brought out.

11 And we'll talk about first the idea of when
12 he was working for WikiLeaks. The Government really
13 zeros in on this, saying like he's working for
14 WikiLeaks. He's never working for them. We'll talk
15 about that to show why that is just not supported by
16 the evidence.

17 But they zero in on this right after the
18 Thanksgiving timeframe. And the Court is well aware of
19 the evidence and how it played out and when he gave
20 certain things.

21 The Thanksgiving timeframe is important

1 because that's when the 911 pager messages were
2 released. And that is when he first became aware of
3 WikiLeaks. And that's supported again by the evidence,
4 something the Government wants to ignore.

5 But the evidence of when he starts to do
6 his WikiLeaks searches. He doesn't really start until
7 1 December. And yet they are trying to suggest that he
8 went to work for WikiLeaks in November of 2009.

9 Then the second part, I don't really know
10 about anyone else, but when you heard the heart attack
11 comment about 15 times from the Government yesterday,
12 it was always taken out of context. It was always put
13 with a Nefarious purpose behind it.

14 He talks about the fact that they are
15 going, the Department of State is going to have a heart
16 attack, in particular Hillary Clinton, when she sees
17 this is available. Then you have to look at the rest
18 of the statement. And the rest of that statement talks
19 about why they would have a heart attack.

20 The fact that these diplomatic cables
21 provide evidence of how we exploit the Third World, how

1 we are doing things that, if most American people knew,
2 probably would not be proud of their Department of
3 State to be doing that and wouldn't want their
4 Department of State to be doing that.

5 Then they talk about, he wanted to be an
6 anarchist. This is where they get that. That's their
7 whole argument about he wants to be an anarchist, an
8 activist. Taken out of context.

9 When you take a look down here, this is
10 important when they talk about him wanting to
11 essentially get attention. He's not seeking attention.
12 He's saying he's willing to accept the price for what
13 he's doing, but he's not seeking attention.

14 Again, take a look at all the comments.
15 Read them in their context, not how the Government has
16 selectively pulled out certain statements.

17 Then the other day talked about Brad making
18 this comment. The State Department collected cells by
19 placing volumes and volumes of information in a single
20 spot with no security.

21 Well, I mean that is actually a pretty

1 accurate assessment of what the State Department did.
2 Because we know from Mr. Wisecarber the State
3 Department never did anything to provide any security
4 over the Net Diplomacy Database. There is no
5 restrictions whatsoever.

6 Again, I'll go in greater detail on that
7 when I talk about the 1030 event. The second statement
8 that they attributed to Pfc. Manning was not made by Pfc.
9 Manning. Again, it's important, when Government makes
10 its representations, for the Court to actually read the
11 section.

12 And really PE 30 and also PE 123, the Lamo
13 chats, the chats allegedly with Julian Assange, it's
14 important to read all of that and not take the
15 Government's word for when they cherrypick certain
16 comments out.

17 Now for a timeline. The Court asked for a
18 certain timeline. This is the Defense's position on
19 the timeline of when certain things happened. I want
20 to explain this for a moment.

21 Everything that's in yellow is items that

1 were published after Pfc. Manning's arrest. Or with
2 regards to Number 6, Your Honor, that is something that
3 was published and he didn't disclose anything after
4 that date.

5 So everything in yellow is something that
6 was either published after his arrest or was published,
7 and he hadn't disclosed anything after that date.

8 Everything in green is something that was
9 published and he then released something after that.

10 THE COURT: I'm not sure I understand that
11 comment. I understand it was published after his
12 arrest. And then the second part of that statement is?

13 MR. COOMBS: The 24 April, Ma'am, this he
14 was not arrested yet. So this was published before his
15 arrest. But he didn't disclose anything else after
16 that date. Does that make sense?

17 THE COURT: Wasn't arrested before 24
18 April?

19 MR. COOMBS: I'm sorry. That should be 10.
20 That was a bad date on my part.

21 THE COURT: Okay.

1 MR. COOMBS: So the green items are the
2 items -- in fact, I'll have to double-check that -- the
3 green items are the items that were actually disclosed
4 during the time that he was in Iraq.

5 So you have the Reykjavik cable. You have
6 the ACIC report. You have one of the OJ documents,
7 even though disclosed them both on the same date. The
8 other one is in August 2010. And then you have the
9 Iraq video.

10 So that's the world that Manning was aware
11 of for WikiLeaks disclosing the information prior to
12 his arrest. And the Government also talked about PE 40
13 for identification. The photograph that they
14 highlighted several times.

15 What we would ask the Court to do, and I'll
16 hand the Court PE 40, ask the Court to look at PE 40
17 and look at that photograph. And the Government --
18 it's hard to follow their argument. I think their
19 argument is, because he's deployed and he comes back
20 and takes the photograph of himself that he cannot be
21 somebody who is concerned about what he's seeing, can't

1 be a whistleblower, can't be somebody who is trying to
2 disclose stuff to the American public. That's the best
3 I can follow their argument.

4 But if you look at that photograph, you see
5 he's wearing makeup. Take a look at the photograph.
6 You see the fact that he has a big bra on. And the
7 resolution is not the greatest, but what you see there
8 is a young man who is cross dressing.

9 What you see there is somebody smiling,
10 maybe, and just maybe that person is smiling because
11 he's able to be himself at that moment. Just maybe.

12 You know, the Government gave a lot of
13 diatribe is basically is what they gave yesterday. A
14 lot of it was not based in fact. The truth is
15 something that you can look at somebody in the eye and
16 you can just tell, you don't need to read it for 8
17 hours.

18 The truth is something that you know. For
19 you, you're in a position now of seeing who is telling
20 the truth.

21 Because most of the time in a case you have

1 got facts. There are two different ways of viewing
2 those facts. And the parties being the parties they
3 are argue those two sides. And they claim there are
4 two sides to the story.

5 In this case, when you hear what the
6 Government said of a traitor, of somebody who had no
7 loyalty to the country, and what you're going to hear
8 from the Defense of a young man who was young, naive
9 and good intentioned, one of us is not telling you the
10 truth.

11 There's no way with these facts and to see
12 what Major Fein said yesterday. No way to look at the
13 facts and see that. And when you think about the
14 truth, oftentimes we have to rely upon how we know
15 somebody to tell the truth.

16 You look at somebody and you say, you know
17 what, I know, you know, Tom Hurley very well, Major
18 Hurley, I know him well. When he tells me something, I
19 know that's the truth.

20 You're in a position now of gauging Pfc.
21 Manning and his intentions based upon this evidence.

1 You don't know Pfc. Manning. So I understand why the
2 Court would say well, you know, I can't rely upon what
3 I normally would consider when looking at the truth.

4 And in those circumstances, when you don't
5 know somebody well, what do you do to find out what
6 really is the truth? What is the ground truth?

7 Well, a good indicator of that is looking
8 to see how that person acts or behaves at a time which
9 they don't think anyone is watching. What that person
10 says at a time which they think nobody is ever going to
11 see the words they have said or wrote down. That is
12 when you can gauge the truth.

13 Let's take a look at that truth. Defense
14 exhibit Romeo. That is the chat between Pfc. Manning
15 and Ms. McNamara. Read all of Defense Exhibit Romeo.
16 And you'll see the truth, something that the Government
17 doesn't want to admit is true.

18 And it's an inconvenient truth to borrow
19 the phrase from a former Vice President for the
20 Government. It is an inconvenient truth.

21 Because it's inconvenient, now it doesn't

1 support the idea of a 104 offense. Now it doesn't
2 support the idea of a traitor of somebody who is a
3 hacker.

4 Because what is Pfc. Manning? He's somebody
5 that in the months leading up to deployment was trying
6 to apply his knowledge to hopefully save lives.
7 Hopefully tell his commanders what he's learned and do
8 a very good job to save lives. He's concerned about
9 everybody.

10 What else does he tell her? He says, I
11 feel a great responsibility and duty to people. It's
12 strange, I know. He places value on people first. The
13 words of Pfc. Manning at a time which nobody could
14 question what he is saying is true. He has no reason
15 to lie to Ms. McNamara. These are his words.

16 He talks about the fact that he's got
17 foreign affairs on his mind constantly. That's one of
18 the bad parts of his job. He has to think about bad
19 stuff.

20 And then, kind of showing his age and also
21 kind of showing a realization of how the world is, that

1 it isn't black and white, that there are shades of
2 dirty gray. You don't know always know what is the
3 right thing.

4 And the Government talked about all the
5 times that Pfc. Manning went back and checked for
6 WikiLeaks, the few times, or looked on the store for
7 the Apache video to see how it was being received.

8 And they did that with an idea of, oh, he's
9 seeking fame, notoriety. I'll talk about how that
10 doesn't hold water.

11 But here's another common sense reason why
12 somebody might do that. You might want to see if what
13 you are doing is worth the risk that you are putting
14 yourself at. How is this being received? Is it making
15 a difference what I'm doing?

16 The Apache video goes out. How does
17 American public respond? And he said in the Lamo chat
18 he was encouraged by that response. They immediately
19 saw what he saw.

20 That's a pretty good common sense
21 explanation for why he would chat on this stuff. Why

1 would he tell his Aunt to post a link to this. Well,
2 he's arrested at this point. People don't know what's
3 going on with him. Again, this shows why he's doing
4 what he's doing. I want the American public to know
5 this. That is not somebody seeking fame and notoriety.

6 Now let's take a look at Adrian Lamo again.
7 Another very good indication of the true nature of Pfc.
8 Manning. He's now in an IM chat with Adrian Lamo.
9 Prior to his arrest. At this point no knowledge that
10 he's ever going to be discovered or arrested or
11 anything.

12 In fact, he doesn't think that's going to
13 be the case. He's concerned just in general that he's
14 made a mess, but he's not at that point under a belief
15 that it's any day now I'm going to be arrested.

16 He's talking to Adrian Lamo. You look at
17 the chats and you see he's reached out to him for moral
18 support. He's reached out to him because of their
19 common background, the fact that Adrian Lamo is very
20 active in the gay and lesbian and bisexual or
21 transsexual community. He's reaching out to him to

1 talk to him.

2 And based upon the conversation Adrian Lamo
3 testified, Government's own witness, testified that he
4 thought this man was young, idealistic and well
5 intentioned.

6 And then you look through the chats, and I
7 could pull each of the exact quotes, but I ask, again,
8 the Court to read from front to back PE 30. And you'll
9 see this is what -- Adrian Lamo testified to this fact,
10 this is what Pfc. Manning was concerned about.

11 He wanted the information, he believed that
12 it would have impact on entire world. And the
13 Government says, entire world, that includes the enemy.

14 Well, his focus was on getting this
15 information out to the world, for them to digest it,
16 for them to see what was going on and hopefully make a
17 difference. He was hoping that, if people knew the
18 true casualty figures in Iraq, that people would be
19 alarmed by that. He was hoping that, if people read
20 the diplomatic cables, they would be alarmed by what we
21 are saying about other countries, how we are not always

1 doing the right thing. With the way you would hope
2 that America would act. We don't act that way. We act
3 with our self-interest in mind. And oftentimes that's
4 to the exploitation of a Third World Country.

5 He testified that Pfc. Manning thought was
6 important information got out. And again, this is
7 going back to the Lori McNamara chats. His feeling of
8 being connected to other people, of everybody, a
9 feeling like we are all a distant family, that we have
10 a duty to each other as humans.

11 And that feeling, even though it's a little
12 naive in that you would have a duty to your fellow
13 human being, what a great feeling to have at his age.
14 What a great thing for a young man to feel a duty to
15 everybody regardless of who they are. That is
16 something that is not anti-patriotic. That is
17 something not anti-American.

18 That really is what America is about, that
19 we take everybody. That's the promise of the Statute
20 of Liberty. Of everybody. Give me your tired, your
21 homeless, your poor. Everybody. We care about them.

1 This country was founded on those principles.

2 And he talks about the fact that he wanted
3 to make sure everyone was okay. And you can see that
4 in the chats of he actually separated himself from
5 other analysts because he did follow what happened to
6 certain people and he wanted to make sure that they
7 were okay.

8 When you think about that kind of
9 responsibility that he's placing upon himself, again
10 this goes to the young nature of it. It's
11 understandable because this is his first deployment.
12 This is his first time as an analyst seeing this stuff.

13 We had testimony from Captain Lim that the
14 garrison environment was much different than the
15 deployed environment, when it came to what he did as an
16 analyst. The garrison environment you are rarely on
17 SIPRnet. And the deployed environment you are always
18 on SIPRnet. Thinking about the stuff that he was
19 seeing and reading on daily basis.

20 He did talk about his humanist values,
21 Adrian Lamo, he talked about the way custom ID tags.

1 And he talked about the fact that he was troubled. He
2 was troubled that no one seemed to care.

3 Something that the Government again tried
4 to gloss over and say he wasn't a humanist. But
5 unfortunately for them the evidence doesn't support the
6 diatribe that they did yesterday.

7 The evidence supports the fact that this
8 young man, who is a humanist, who did care about other
9 people, did care what happened to people. And what was
10 his motive? He talked about that with Adrian Lamo. He
11 was hoping to spark worldwide discussion, debates and
12 reforms.

13 He wanted people to see the truth. He
14 wanted to see the truth because he was hoping that
15 things would change based upon that information.

16 Nowhere does he discuss wanting to give
17 information to the enemy. Nowhere does he discuss, I
18 know the enemy is going to get this. He's solely
19 concentrated on making a difference, changing the way
20 the world operates. Again, young and naive but good
21 intentioned.

1 Let's look at some of the significant
2 events that happened for him. We know that there's
3 Christmas Eve (inaudible). And Chief (inaudible)
4 talked about the fact that was a topic of discussion
5 the following day.

6 We know about the arrest of 15 Iraqis for
7 printing what was at the time considered anti-Iraqi
8 literature, but was really just a scholarly critique of
9 where did the money go.

10 And when you take a look at what Sergeant
11 Sadler said, Pfc. Manning came to him with that
12 information and he was troubled by it. He was troubled
13 that no one cared. Nobody cared about the fact that
14 perhaps innocent people were being arrested.

15 Look at PE 123. This is the chats between
16 Pfc. Manning and Press Association. If you look at the
17 first couple of pages of that, you'll see where Pfc.
18 Manning talks about this -- he gave them information.
19 And he even says, hey, look, you know, look to this,
20 use this hotel because it looks like, you know, some of
21 this information came from a fellow journalist for you

1 to publish this.

2 And what do you see in those chats? Press
3 Association is saying, we need further confirmation in
4 order to go with this story. We'll, again, talk about
5 how that shows that they are a journalistic
6 organization.

7 That's a big event for him. The Apache
8 video and Farah video are talked about in PE 30, the
9 Lamo chats, and he talks about how that impacted him
10 and what he saw. And how he's troubled by that.

11 But the day-to-day activities. And this is
12 important because, when you think about just for a
13 moment, you go from being a 20, now 21 year old, at the
14 time of his deployment, and never been deployed, first
15 duty station, you go from being a 21 year old and
16 always looking at things from the standpoint of like
17 JRTC of hypotheticals, of pretend, the people who die
18 at JRTC is all pretend. Those are not real people.

19 The models and the things that happen there
20 are all pretend. And you go from pretend to the
21 deployed environment. And at the deployed environment

1 you start reading these things. And there's has to be,
2 and we train this in soldiers, there has to be kind of
3 a time in your mind where you separate yourself. And
4 the only way you can do your job is to basically read
5 this, being disengaged, the loss of life you are seeing
6 there doesn't really matter.

7 That's how you do your job. And what's
8 clear is, Pfc. Manning from the Lamo chats forward you
9 can see, as he's being exposed to this information,
10 he's being troubled by what he's seeing.

11 And when he says the SigActs represent the
12 most significant information, he's talking about the
13 loss of life in Iraq. And he talks about that in the
14 Lamo chats.

15 And what is clear is, at some point there
16 is a change to where you can no longer just ignore the
17 fact that these are real lives being lost. These are
18 real people dying.

19 You looked at the Apache video from the
20 standpoint of a Judge looking at it to say, I want to
21 see if the Finkel books quotes what is in this video.

1 That's how you looked at it. And we gave you a
2 transcript of the video for you to look at that.

3 I have three clips. I now want you to look
4 at this and think, how would a young 21 year old look
5 at this same thing, when they are thinking about loss
6 of human life.

7 (Playing Video)

8 Look very close here and you can clearly
9 see this is a camera. The guy is down. Is being shot.
10 He's clearly wounded. We are going to shoot him some
11 more.

12 They are firing into a cloud of dust. You
13 see there, they switched -- look where his ammunition
14 lands. They laugh about that. Where he was aiming and
15 where it actually lands.

16 Targets. That's how you talk about people
17 in order to not be concerned that you are just killing
18 people. Shooting some more. Just shooting. People on
19 the ground.

20 All right. So you see there a group of
21 people -- and certainly you could view that from the

1 standpoint of the Apache crew engaging an enemy. You
2 certainly could.

3 You also can view that from the standpoint
4 of a young person looking at 8 people in a group, and
5 what we now know to be the truth, the truth is two
6 reporters there. And just standing in a group on a
7 street corner. And you get shot like fish in a barrel.
8 You just keep shooting and keep shooting.

9 And if you thought for a moment, okay, it's
10 just them engaging the enemy. Then you go into the
11 second.

12 (Video Played)

13 Ask if he's got a weapon. Guy crawling on
14 the ground and you are watching that. This is a real
15 person. The time this was happening this is a real
16 person on a sidewalk.

17 Come on, buddy, all you got to do is pick
18 up a weapon. He picks up something and they are going
19 to kill him.

20 You have got units coming that way. They
21 are close. Right below the helicopter. He's going to

1 pop players to indicate where they need to go. So we
2 know we have got ground troops on the way there. Okay.
3 So those are facts.

4 Now a van pulls up. People picking up
5 bodies and weapons. Where are the weapons? No
6 weapons. Asking if he can shoot. Picking up bodies?
7 No. Picking up a wounded person. Got van.

8 We now know children here. Even so, you
9 are looking at this. You have got two people unarmed
10 trying to take a wounded man into a van. The Apache
11 crew is begging, come on, let us shoot. Again, we know
12 ground troops are on their way.

13 Look at the guy on the ground. They fire
14 some rounds into him. He's laying down. They fire
15 several rounds into the van. Just constantly firing
16 into the van.

17 The latter part of that video they
18 congratulate themselves on a good shoot. When they
19 ultimately find out, as you see when you watch the
20 video, when they find out the children are in that van,
21 what this say is, well, it's their fault for bringing

1 children on the battlefield.

2 Some people might view that as the
3 battlefield. Those people viewed that as their home,
4 as their street, as their homes and houses where they
5 lived. That's what they viewed that, not the
6 battlefield.

7 Again, you have to look at this through the
8 eyes of a young man who cares about human life. When
9 you hear the banter of the helicopter crew, as somebody
10 who spent a great deal of time in the military, and has
11 been deployed several times, thankfully never engaged
12 in any combat, I understand that. I do understand
13 that.

14 I understand --

15 THE COURT: Mr. Coombs --

16 MR. COOMBS: I think it's a fair comment on
17 the inference, Your Honor.

18 THE COURT: What you understand is not
19 relevant. Move on, please.

20 MR. COOMBS: Well, the Court should
21 understand that the banter that is in here is the crew

1 talking about how they are engaging targets, not human
2 life.

3 What the Court should understand when you
4 look at that is, it is the crew disengaged from what
5 they are doing. And common sense will tell you, you
6 disengage from a difficult thing so you can go to bed
7 at night and sleep.

8 But what you do when you can't
9 disadvantage. What do you do when these images are
10 burned into your mind?

11 Now let's take a look at the third video.
12 (Video played).

13 They are firing missiles into a building.
14 We are going to see an innocent bystander just walking,
15 no weapons, no nothing. Who was that person? What was
16 that person's goals and hopes in life? They see that.
17 Do they talk about collateral damage? No.

18 They are going to engage the building
19 again. So when the Court looks at this, the Defense
20 requests that you not disengage, that you not look at
21 this from the eyes of, you know, this just happened on

1 a battlefield. These are real lives.

2 What we just saw, collectively, at least
3 nine lives, probably more, because the building, we saw
4 people go into that building when you watched the
5 video, extinguished. Did they all deserve to die?

6 That is what when Pfc. Manning is watching
7 this video he is seeing and he's questioning. Even in
8 the SCIF they talked about this video among the S2.
9 They talked about the video and what they saw.

10 Now before I talk about what I believe the
11 evidence shows, I want to spend some time on the
12 Government's version and their story.

13 So the Government in their story that they
14 want you to believe, and really their story has the
15 logic of a child, when you listen to the facts and you
16 compare the facts with the conclusions that they try to
17 draw.

18 There's no sophistication there. It is
19 just taking facts and running with them to a conclusion
20 that's not supported. Something you would expect of a
21 child. And so you see he deploys in November 2009.

1 According to the Government within two weeks -- two
2 weeks, he starts working for WikiLeaks.

3 That's their theory. He deploys. Two
4 weeks on the ground. Working for WikiLeaks. Do they
5 give you a motive? What would cause this young man,
6 who in the chats with Lori McNamara is talking about, I
7 want to do everything I can to help my commanders, make
8 sure everyone gets home safely. What would cause this
9 young man to go from that and in two weeks time become
10 an employee of WikiLeaks.

11 The Government will gloss over that. They
12 got a little bit of evidence, and I'll talk about why
13 none of that evidence holds up to any sort of
14 inspection.

15 That's their story. That's what they want
16 to run with. And why? Well, because it is central to
17 how they portray Pfc. Manning.

18 And the evidence that they highlight in
19 order to kind of bolster their story is the 2009
20 WikiLeaks Most Wanted List, the evidence from Jason
21 Katz's computer, PE 30, the Adrian Lamo chat, the

1 evidence regarding the tweet on the .mil addresses and
2 the evidence on the USFI Gal, which is really division
3 GAL.

4 The fact that Pfc. Manning wiped his
5 computer in January of 2010. And the allegations of
6 Showman. This is what they relied upon. So let's talk
7 about each one of these real fast.

8 First, the 2009 Most Wanted List. The
9 Government tried to make this list seem like an evil
10 thing. The way they did that was they gave you the
11 sort version, which just listed all the countries and
12 the information or documents that WikiLeaks said they
13 wanted.

14 And they said this was the Most Wanted List
15 of WikiLeaks and this was Pfc. Manning's guiding light
16 for when he hit the ground in Iraq. That's their
17 story.

18 Well, the Court then realized that the
19 Government, as usual, was not telling you the entire
20 story. And what they left out was, there was a
21 non-short version. And in that non-short version it

1 listed really what this whole list was about. It was
2 WikiLeaks saying, look, tell us, humanitarians,
3 activists, NGOs, fellow reporters, what do you want to
4 know in your country?

5 What in your country is being hidden from
6 the public that you believe the public should know?
7 Give us a list. We are going to compile that list and
8 we are going to work to obtain that list.

9 What does this sound like? Any
10 journalistic organization that has like a hot line or a
11 anything else says, call us. You got a story -- call
12 us. We'll investigate. Channel 12 News Investigates.
13 You tell us about something bad. We are going to find
14 out. Bad landlord, whatever. That's what this list is
15 about.

16 But the Government doesn't want to
17 highlight that. It doesn't make the list seem so evil
18 anymore. And then, when they say this is a guiding
19 light, we'll talk about this in a moment, it's
20 important to look at the fact that of the 78 things
21 listed on the United States, the Government can only

1 remotely tie in to four of the things on the list.

2 When I say remotely -- it's a stretch.

3 They wanted CIA intersection videos. He searched for
4 intersection GITMO. That's the same thing nothing was
5 verbatim. And yet this is his guiding light for 78
6 things listed under the United States, the Government
7 ignores the facts that there's a lot of other countries
8 on that list. It's the same four for the several
9 hundred other things on that list for the other
10 countries.

11 Pfc. Manning had access to a lot of
12 information. Certainly on the other countries. And
13 had he wanted to, and this was his list, you would see
14 a lot of searches on Intelink that match up verbatim or
15 very closely to the items requested on that list.

16 But you don't see that. So now the first
17 little bit of evidence, the 2009 Most Wanted List, no
18 longer looks like such a good piece of evidence.

19 Jason Katz's computer. Now the Government
20 yesterday talked about a very convoluted way of saying
21 that Pfc. Manning must have provided the video to Jason

1 Katz.

2 I'm going to give you a very
3 straightforward common sense way of looking at the
4 evidence that doesn't involve the leaps of logic that
5 the Government is asking you to make.

6 First of all, what we know as fact.

7 There's no tie between Pfc. Manning and Jason Katz
8 forensically. No tie whatsoever. And they got Pfc.
9 Manning's computer and they have Jason Katz's computer.
10 And no tie whatsoever.

11 Jason Katz has the Farah video on his
12 computer. We know that saved on his computer on 15
13 December 2009. That's a fact. We know, and it's an
14 unfortunate fact for my client, because it would prove
15 that he's innocent definitively, but we know there's
16 forensics from 1 December 2009 forward.

17 That's what we could show for the CentCom
18 Farah video. Shaver talked about that that 1
19 December 4, that the only thing we can show when things
20 were accessed. For whatever reason we can't show
21 anything earlier than 1 December. What we can show is

1 that Pfc. Manning never accessed the CentCom Farah
2 videos that were, you know, on the CentCom server.

3 So we know that as a fact. So the
4 Government then extrapolates from that, that because
5 Jason Katz had it on his computer 15 December, and we
6 can show all the forensics from 1 December forward,
7 that Pfc. Manning never went there, that Pfc. Manning
8 must have given this in November. And thus, is born
9 their grand conspiracy that within two weeks he goes to
10 work for WikiLeaks.

11 At some point, sitting down over this, they
12 must have done the aha moment, we can't prove it but
13 this sound like a good story. Let's run with that.

14 So then, we look to some of the other ways
15 that maybe we could prove that what they are saying
16 really isn't true. And we got the Centaur logs. Your
17 Honor, that covers the net flow from, you know,
18 basically can show CentCom to Pfc. Manning's computer.

19 And Special Agent Shaver said at no time in
20 the November timeframe did they have Centaur Logs to
21 show the amount of information that would be needed to

1 encompass a video being transferred from CentCom to Pfc.
2 Manning.

3 But, unfortunately, or fortunately for the
4 Government's theory, on 30 November we don't have
5 Centaur Logs. We can't show anything on that day. We
6 don't know why we don't have them. We just don't.

7 And so, now the Government's theory is even
8 more refined. It's not just before 1 December, Pfc.
9 Manning must have given it to Jason Katz on 30
10 November. That had to be the day. Absolutely,
11 positively had to be the day forensically.

12 And what did he have on 30 November? Well,
13 we have on 30 November he searched Intelink logs for
14 CentCom. We can't show anything forward from that
15 because once you leave basically that initial search we
16 can't show where you went.

17 Okay. So this is what the Government could
18 show. And what the Government wants you to believe
19 then is, based upon this, then they want to take you on
20 their little journey of, again, the child's logic of,
21 he searched for CentCom so he must have eventually came

1 across the SJA folder. And if he came across the SJA
2 folder, and he would have searched that folder,
3 eventually come across the stuff dealing with Farah and
4 he did that. And that's how he got the video. That's
5 how he did it.

6 They didn't offer any evidence of how much
7 was on the CentCom folders. They didn't offer any
8 evidence of how much was in the SJA folder. Why not?
9 Well, common sense would be, because they would be like
10 looking for a needle in a haystack.

11 But they don't want to highlight that.
12 They want you to run right past this logical speed bump
13 and just go with them, just follow us on our logic.

14 And so let's do that. Let's go along with
15 the Government and its logic. Pfc. Manning hits the
16 ground in Iraq in mid November. For whatever reason
17 his motive, I'm now going to use the 2009 Most Wanted
18 List as my guiding light. And I'm going to give
19 something to WikiLeaks. I'm going to do it because I'm
20 now a traitor. I'm now an activist.

21 So what is the first thing I'm going to

1 choose? What is the very first thing I'm going to give
2 to WikiLeaks and say look, WikiLeaks, I'm for you.
3 Well, I'm going to give you an encrypted video that I
4 can't see, you can't see, guess what, we don't have a
5 password for it. Oh, by the way, you never asked for
6 it. That's not on your 2009 Most Wanted List.

7 This is kind of like someone showing up to
8 a wedding and giving you something that's not on the
9 list that you registered for. What do you think Pfc.
10 Manning is doing at this point? According to the
11 Government he is like, hey, you know what, I can go to
12 the 78 things that you want, but I don't want to give
13 you that stuff.

14 You know, all you wanted is General Order
15 Number 1. I don't want to give you that. I want to
16 give you an encrypted video that I can't see.
17 Intelligence community see it. I want to give it to
18 you.

19 So that's the thing he chooses to give.
20 Then he waits five months to send any of the supporting
21 documentation that's right there with the encrypted

1 video.

2 And why is the Government stuck with that
3 story? Well, unfortunately for them forensics show
4 that he pulled all the supporting documents in April of
5 2010. That's a lot later than the November timeframe
6 that we want everyone to believe he went to work for
7 WikiLeaks.

8 All right. So we got to come up with a
9 crazy story for this. Oh, I know the crazy story.
10 He's seeking notoriety, he's seeking fame. And when he
11 sees the results from the Apache video, Lord, oh, my,
12 what he does then, he says, I need to go find some
13 Farah stuff because I only gave them the encrypted
14 video which, they haven't, you know, crypt it, as far
15 as I know.

16 So I need to give them some more stuff
17 because this will enhance my fame, my notoriety.
18 That's the logic that Major Fein argued yesterday.

19 Really? And they go with that logic
20 because they say, you know what, when he pulled all
21 that supporting documentation in April of 2010, he

1 didn't pull the encrypted videos. And we didn't pull
2 the encrypted videos, well, that has to be proof that
3 five months earlier he gave the encrypted video to
4 WikiLeaks. That has to be the way this works.

5 That's our child logic. Let's look at
6 something that maybe makes a little more sense. Agent
7 Shaver, the Government's own witness, on the stand said
8 you know what, I looked and I found evidence that Pfc.
9 Manning pulled a video from the T-Drive in Iraq, from a
10 folder labeled Farah TTP1.WMV. And guess what? That
11 video wasn't encrypted. And it is a Farah video.

12 And the Government never disputes that.
13 They never dispute that he pulled an encrypted Farah
14 video that was available on the T-drive. They want you
15 to ignore that evidence because that doesn't really
16 help their story.

17 And kind of as a last ditch effort they
18 say, well, wait a second. This really helps us. We
19 want to say that because of an HN or a tweet that they
20 had this encrypted video that they needed super
21 computer on that that is why they got the encrypted

1 video.

2 Well, again, in January is much earlier
3 than April, when Pfc. Manning gave them the Farah video
4 and the Farah supporting documentation.

5 But how did WikiLeaks get the encrypted
6 video then? I mean, if not Pfc. Manning, well, how?
7 That's the Government scratching its head going it must
8 have been Pfc. Manning.

9 Well, I don't know, maybe I can give
10 another person that might be a suspect. That would be
11 Jason Katz. In an effort to, apparently, prove its
12 case the Government has proven certainly reasonable
13 doubt that Jason Katz is the source of this video.

14 But even beyond reasonable doubt I think --
15 well, it's clear from the evidence Jason Katz is the
16 source for this video.

17 What do we know about Jason Katz? Well, we
18 know he's using a program that allowed him to transfer
19 files between his computer and another computer. It
20 wasn't his home computer. That's for from Mr. Withers.

21 We know that he had password cracking

1 software on his computer. Again, from Mr. Withers.
2 And we know that the company he worked for BO, had a
3 supercomputer system, he had access to. That's from
4 Mr. (inaudible).

5 So when Jason Katz is working on this,
6 before he's caught apparently, he's got the video, he's
7 got the computer password cracking software and he's
8 got access to a supercomputer.

9 And a little hard to read, but go to PE 30.
10 And they highlight a couple things. And the first
11 is -- Adrian Lamo. They also caught wind that he had a
12 video, Ginara airstrike and Farah video.

13 Again, when did this chat take place? This
14 chat takes place in the May timeframe. And as the
15 Government points out, WikiLeaks tweeted they had the
16 encrypted video in January. And they needed
17 supercomputer time.

18 Well, so he talks about them having the
19 encrypted video. He never says, I gave them the
20 encrypted video. Then, again, when you look at the
21 chats, Adrian Lamo -- and this is again kind of

1 highlights the inconsistency of the Government's
2 evidence, asks anything else interesting on the former
3 collective information. And Manning responds, I don't
4 know. I only know what I provided to him.

5 And Adrian Lamo says, what do you consider
6 the highlights? Remember the highlights, the
7 highlights, highlights comment that the Government kept
8 on harping on? That was a question by Adrian Lamo.

9 And what does Pfc. Manning say in response?
10 He says, the Ganari airstrike videos. Doesn't say
11 encrypted. A full report. The GITMO papers and State
12 Department cable, database.

13 Doesn't say I gave them an encrypted video.
14 Again, common sense doesn't check itself at the door.
15 Might for the Government but it doesn't for everyone
16 else.

17 And common sense says, you do not air
18 something to somebody that you yourself don't know what
19 it is. But you know what? You know what it is. You
20 can look at that video. And when we get to whether or
21 not it is a 793 offense, look at that video. Look at

1 that video and compare what the actual OCA says this
2 could do to the country. And say really? Really?
3 When you look at the video, what it shows.

4 But, again, common sense is not an
5 impairment to the Government's argument. And they want
6 to ignore the T-drive. And the T-drive, he pulled the
7 WMV file and put on two locations. Agent Shaver
8 testified about that.

9 And we know from Chief Hat that Pfc. Manning
10 was the most organized analyst he's ever seen in his 20
11 years. His words. When he looked at the T-Drive, it
12 was more organized than he had even seen anyone else.
13 When he looked at Chief (inaudible) t-Drive didn't even
14 compare. No information Pfc. Manning did.

15 And so you see a very, very organized Pfc.
16 Manning. And he has several directories and
17 subdirectories and his files are very neatly organized.
18 And Shaver said he had pulled, again, folder, a video
19 from a folder labeled Farah and placed it on his
20 computer on two occasions. Again, labeled Farah.

21 Now unfortunately we couldn't see that

1 video. Couldn't pull it up. But it's clear from the
2 evidence that Pfc. Manning organizes things and labels
3 them what they are. We get that from Chief Hat.

4 So it's clear to anybody that this is the
5 Farah video. When is it pulled? It's pulled 17 April.
6 When does he pull the other information. 10 April.
7 It's clear that this is the airstrike video that he
8 gave to WikiLeaks in April of 2010.

9 Why does the Government reject that idea?
10 Why does the Government reject the idea that Pfc.
11 Manning gave this in April of 2010? And the reason why
12 is it doesn't fit the fictional story that they have
13 drafted in their mind.

14 It's an inconvenient truth for them because
15 they need Pfc. Manning to start to work for WikiLeaks in
16 the two weeks that he first arrives on the ground.
17 They need to portray him as anything but what he
18 actually is, a young man who is naive but good
19 intentioned.

20 So their fictional story relies upon the
21 idea that he gave this video, cryptic video that he

1 could see in November of 2009, and then waits five
2 months to give the supporting documentation. Points to
3 the fact that WikiLeaks treated that they had .mil
4 addresses for the USF-I GAL. WikiLeaks treated they
5 wanted as many .mil addresses as possible.

6 Again, this is important to look at this
7 because when WikiLeaks treated this, they didn't ask
8 for the GAL, USF-I GAL, they just asked for .mil
9 addresses, not Iraqi .mil addresses.

10 And the forensics were everything that you
11 have here shows that he didn't send this to anybody.
12 And it was the division, if anything.

13 And why would Pfc. Manning do this? The
14 Government gave you a version of the events that they
15 believed that he still wanted to work for WikiLeaks and
16 still wanted to betray his country.

17 Here's another common sense explanation.
18 And that relies upon information that we received from
19 many of the Unit witnesses.

20 Pfc. Manning was very talented with
21 computers. Pfc. Manning was somebody who could fix

1 things, could work on computers, was asked to work on
2 the computers, did programming. A lot of people talked
3 about he was the most talented person they had seen
4 with a computer.

5 At this timeframe, as the Court thinks
6 about it, he's removed from the SCIF and he's put in
7 the supply room. And we heard testimony that he didn't
8 have things to do every day, that oftentimes he spent
9 time just on the internet.

10 And so seeing this tweet, if he saw the
11 tweet, and it looks like one could assume, yes, he must
12 have seen that tweet. Common sense explanation would
13 be that, can I do it? As a computer person, can I?
14 Can I export the email addresses? And we know that is
15 probably what's going on in his mind because then he
16 researches how you do it.

17 And then he pulls this information and, you
18 know, he writes a tasker for himself. And he writes a
19 tasker, again, that is kind of fits with Pfc. Manning of
20 giving himself a job to do, giving himself something to
21 do to occupy his time. And so he writes the little

1 tasker. He does it. And what does he do with the
2 information? He leaves it on the supply room computer.
3 Doesn't try to erase it; doesn't try to wipe the supply
4 room computer. And then he takes it back to his
5 personal computer and then deletes it.

6 Why does the Government want to argue that
7 Pfc. Manning stole, purloined and knowingly converted
8 the USF-I GAL. Why is that their argument? Again,
9 here it fits with their fictional story. Their
10 fictional story relies upon Pfc. Manning wanting to work
11 for WikiLeaks, wanting to do everything he can for
12 WikiLeaks and not for his fellow soldiers.

13 So that's the story and that's why they are
14 running with that story. And part of the way they
15 support their story is saying he wiped his computer in
16 January. And that's why we don't have certain
17 evidence. He wiped it in January. Low and behold, if
18 he didn't do that we could have proven the whole Farah
19 thing but for him doing that.

20 And that's their argument. If that were
21 true, again, this is the child's logic, if that were

1 true, why wouldn't you wipe your computer in February,
2 when you gave the cable and the Apache video. If he
3 were really trying to cover tracks, what about in March
4 when he gave the ACIC, DAB and OJ documents.

5 After doing that, if you are trying to
6 cover your tracks, wouldn't logic say, go ahead and
7 wipe your computer? We know from Mr. Johnson's
8 testimony that it took three hours to do a 7 pass wipe.
9 So it's not time consuming. Why not just wipe it, if
10 that were really what you are trying to do, cover your
11 tracks?

12 What about in April, Your Honor, when he
13 gave the Farah video and Farah files. Once you did
14 that, wouldn't you wipe your computer in April, if you
15 are really trying to cover your tracks?

16 And certainly, if you are really trying to
17 cover your tracks, then in May you are no longer on the
18 T-SCIF, been removed and you are in the supply room.
19 That would be the most opportune time, if you were, in
20 fact, wanting to cover your tracks, to then wipe your
21 computer.

1 He no longer had access to anything
2 classified. Nothing else you are going to be giving to
3 WikiLeaks. If you are, in fact, an employee of
4 WikiLeaks, well, you know, can't give you anything
5 more, so I'm going to cover my tracks.

6 Well, he didn't do any of that. That's
7 because covering his tracks was not what he was trying
8 to do. So let's look at why would you do that when he
9 did it. Well, first the 7 pass wiping. Government
10 talked about 7 passes, 7 passes. Well, that's
11 according to Mr. Johnson, the minimum when you pipe
12 your computer. You can do a 35 pass and a higher pass.
13 7 pass is what you could do to wipe your computer.

14 Why would you wipe your computer? And we
15 heard a lot of testimony about that from Unit witnesses
16 and Mr. Milliman. Iraq is not an easy environment on
17 computers. Where was his personal computer? It was in
18 Iraq. We know the D6A computer needed to be wiped on a
19 frequent basis, have their operating system
20 reinstalled.

21 We heard no testimony that reinstalling the

1 operating system and clearing unallocated spaces is
2 anything but normal. The normal process of basically
3 giving your computer back to square one, when you're
4 having problems with it.

5 Again, that's an inconvenient truth for the
6 Government. They want it to be he's covering his
7 tracks. He's not very good at it. He only does it one
8 of the five months that he probably should have. Let's
9 ignore those facts.

10 And why do they want to make a big deal out
11 of that, a bill deal that on 25 January he wiped his
12 computer and 31 January he cleared his unallocated
13 space. Again, it fits with their fictional story.

14 Doesn't fit with the facts. Doesn't fit
15 with what we know and how common sense would work, but
16 it sure does help our story. So let's go ahead and run
17 that.

18 Then, to add insult to injury on their
19 story they put up the testimony of Specialist Showman.
20 And Specialist Showman is the person they are relying
21 upon apparently to portray my client as a person who

1 has no loyalty to the country, as a person who is a
2 traitor. And they put Ms. Showman up there.

3 Now she apparently has this exchange with
4 Pfc. Manning, and she has a certain understanding of it.
5 That even though she counseled him for drinking too
6 much caffeine, for taking too many smoke breaks, you
7 know what, I just never reduced that counseling where
8 he said he had no loyalty to the country or American
9 the flag to writing. She didn't do it. Why? Well,
10 you know, just didn't think it was appropriate.

11 Really? You didn't think it was
12 appropriate? That's your testimony. And then
13 importantly, when CID talks to her the very first time
14 after Pfc. Manning is arrested, and she knows why he's
15 arrested, she never mentions these comments to CID
16 after the arrest.

17 And why? I just don't think they ever
18 asked me about that. But I do mention the time that he
19 brought the camera into the SCIF and left it in the
20 SCIF. That was a bad thing to do. I did remember him
21 staying late, so I mentioned that. The one thing that

1 you would expect at this point for the person to
2 mention right out of the gait, I don't need to be asked
3 a question. If I'm showman and that happened you know
4 what, I was right. I was right. No one would listen
5 to me I was right.

6 I said he had no loyalty to the country.
7 The flag meant nothing to him. I screamed at the
8 mountaintop to Master Sergeant Adkins, I thought he was
9 a possible spy. I thought he was a spy. Nobody
10 listened to me.

11 Showman would, you would expect her to be
12 screaming that from the mountaintop if that were true.
13 She doesn't. She has this incredible story of going to
14 Sergeant Adkins, telling him about no loyalty to the
15 flag, no loyalty to the country and I think he's a
16 possible spy.

17 Master Sergeant Adkins apparently,
18 according to her, reports this up the chain. But
19 nothing happens. She never goes outside or around
20 Master Sergeant Adkins because that would be
21 inappropriate. She doesn't use the open door policy

1 for the First Sergeant or the Company Commander
2 because, again, that would be inappropriate. And she
3 deploys with somebody that she thinks is a possible
4 spy.

5 And she becomes a supervisor again. She
6 does that, according to her, well, I had faith in
7 Master Sergeant Adkins. We saw Sgt. Adkins testify and
8 the Court can judge whether or not that would be true,
9 that you have faith that he would take action on
10 something, if something was said.

11 If it were truly said, you would expect
12 her, she didn't see something, I said how many times
13 did you go back to him, five times, time and time again
14 asking about this. Master Sergeant Adkins doesn't
15 remember any of that.

16 Why would she lie then? Why would you she
17 make up this story? Well, okay, here's a common sense
18 explanation for that. She's got room to fabricate.
19 She doesn't like Pfc. Manning. He punished her. He
20 made an EEO complaint against her.

21 See statements in the movie where she talks

1 about the fact that, you know, this is not somebody
2 that has loyalty to the country, somebody does this is
3 not somebody who is a true American.

4 And she says that those comments were not
5 about Pfc. Manning. And yet the facts are somebody who
6 joins the military, who has access to classified
7 information, deploys, gives that information, not just
8 to anybody, not to an American company or something
9 like that but to a foreigner, that's not an American.
10 That's not somebody that has loyalty to our country.
11 No, no, no, I wasn't talking about Pfc. Manning, just in
12 general talking about that.

13 It's clear she has her firm belief. And
14 it's no clearer when you look at her twitter account,
15 when she said, anyone who would follow Pfc. Manning or
16 support what he did essentially are idiots or ignorant
17 people. And saying that ignorant people do what Pfc.
18 Manning did. She clearly has a motive to fabricate.

19 And then we look at Mr. Adkins, Master
20 Sergeant Adkins. He doesn't remember her telling him
21 any of this. He doesn't recall or remember that. And

1 he indicated he has problems with his memory.

2 Something that the Defense did not know. Yeah, I don't
3 recall that. I don't remember that.

4 But here's some important facts. He never
5 wrote about the alleged statements in his MFFR. The
6 one he wrote that's in evidence he talked about the
7 behavioral issues. This wasn't put in there.

8 Something you would expect. He does talk about the
9 events that happened prior to the deployment.

10 He never mentions any of this in the
11 multiple interviews that he gave to CID or to the 15-6
12 investigation. Never mentioned this at all. And he
13 says, RSM, yeah, I would expect I would have saying
14 something about that, if I knew that.

15 In his GOMAR rebuttal he states Pfc. Manning
16 never made disloyal comments. And he admitted to that.
17 The one little piece of evidence that the Government
18 wants to latch on to, a week or a month later after the
19 GOMAR involved saying Manner never said any of those
20 comments that I'm aware.

21 A month later in the admin reduction board

1 rebuttal he said, oh, I correctly reported the disloyal
2 comments. Showman testified to that. I correctly
3 reported that up the chain.

4 Then he admitted on the stand that his
5 attorney wrote that for him. And he admitted on the
6 stand he didn't want to get reduced from master
7 sergeant, sergeant first-class. And I think when you
8 look at the timeline, apparently, I asked him, does
9 your memory, you know, increase, get better in time; do
10 you sometimes remember things, sometimes not? And he's
11 like I really don't know.

12 There's no stock that you can place in the
13 Government's evidence on this. But this is the
14 evidence that they chose to run with. This is all they
15 have to say anything about Pfc. Manning being disloyal
16 to the country.

17 But please ignore the fact that, this is
18 the Government speaking, ignore the fact that everyone
19 else in the unit, and several unit witnesses said, Pfc.
20 Manning never said anything to me that indicated
21 disloyalty to the country or not being loyal to the

1 American Flag.

2 And all the other unit witnesses talked
3 about the fact that he was the person they could rely
4 upon to get a job done. He's the person that they gave
5 taskers to and he got the job done.

6 So apparently this disloyal person, who has
7 no loyalty to the country or flag, he's one of their
8 go-to-analysts, one of their best analysts.

9 And this kind of goes to a couple
10 disconnects in logic for the Government. Are they
11 trying to say he was arrogant and seeking fame or
12 trying to say he wanted anonymity and was trying to
13 cover his tracks?

14 Here are some quotes from yesterday's
15 closing by the Government. To guarantee his fame; to
16 get attention from the press; he sought publicity; he
17 collected trophies. And the trophy they are talking
18 about, apparently, I think is the SD card and perhaps
19 the CD that was found in his shoe.

20 So let's talk about the CD for a moment. A
21 common sense explanation for why the CD would be in

1 there. After the Apache video was released, Captain
2 Fulton came back and said she didn't believe it was
3 legitimate. She didn't believe that was the actual
4 video.

5 And Pfc. Manning told her, no, we have the
6 video. It's on the T-Drive. I can send it to you.
7 She said, do. And she compared it. Okay. That's the
8 same video.

9 And a common sense explanation for why Pfc.
10 Manning might at that point burn a video isn't to
11 collect a trophy. Really that doesn't stand up to any.
12 The video is available online. At that point what
13 trophy are you collecting, when it's available online?

14 Look at how it's labeled. A common sense
15 explanation, when you compare that with the FOIA
16 response, the FOIA response by CentCom, doesn't it
17 indicate a video was ever found, would then explain why
18 someone might make the video and make it look like it
19 is a secret video and label it as such in order to give
20 it authenticity and not just some video and label it
21 Reuters FOIA request.

1 Look at the emails that the Government
2 introduced in evidence where he wrote to various
3 journalists about where this video could be found.
4 Again, that gives you a common sense reason for why he
5 might make this copy. Or you can believe the
6 Government collecting trophies.

7 Then the second part, anonymity, obsessed
8 with covering his tracks. Wanted to protect the
9 source. He tried to erase any evidence of what he did
10 the one time he wiped his computer.

11 So these things don't really compare to
12 each other. You can't really seek anonymity and then
13 seek fame at the same time. That's problematic.

14 And then here's the other problem. Is he a
15 good soldier or is he a hacker? The Government offered
16 a lot of evidence that he's the go-to-analyst. That he
17 did a great job, was one of the best at what he did.

18 We heard evidence that he never had
19 problems getting his work. In fact, always got his
20 work done on time. There were some occasions where he
21 couldn't complete something because he didn't know how

1 to do it for sure. That wasn't abnormal. Captain Lim
2 talked about, as a junior analyst you would expect
3 that.

4 And even though Pfc. Manning was the
5 go-to-analyst for doing that, he was the go-to-analyst
6 basically to collect stuff and to organize it. He
7 wasn't the best at connecting all the dots, he wasn't
8 the best at doing analytical stuff. That wasn't
9 abnormal because he was a journal analyst.

10 And then the Government says he spends time
11 systematically harvesting information. That's kind of
12 like the catch phrase. And they try to say he had a
13 two week mission for the Diplomacy Database.

14 Well, the problem with that, he's getting
15 his work done on time. Nobody is saying he had a two
16 week drop in his work performance. We heard evidence
17 that Wget would perform as a background function. He
18 could still do anything else. He didn't have to be
19 paying attention to it.

20 So, again, that doesn't add up. Is he
21 constantly searching for WikiLeaks or is he the most

1 organized analyst in the S2 section? Again, that's
2 kind of a logical disconnect between what the
3 Government is arguing.

4 If he's constantly searching for
5 information for WikiLeaks, the Government points to the
6 amount of the documents. But remember that it doesn't
7 take very long to download these documents. And back
8 in the day when you would have to take documents and
9 copy them, a few hundred documents would mean a lot,
10 because you are actually putting on a copier and
11 copying it.

12 Nowadays with a CD this is not a lot of
13 documents. In fact, when you look at how much
14 information, and based on the testimony, how much
15 information was available on SIPRnet, he has unlimited
16 access to SIPRnet, unlimited ability to download
17 information, unlimited ability to then take it out, if
18 he wanted to.

19 The amount of the documents in this case
20 actually is the best evidence that he was discrete in
21 what he chose. Because if he was indiscriminate, if he

1 was systematically harvesting, we wouldn't be talking
2 about a few hundred thousand documents. We would be
3 talking about millions of documents. But again, that's
4 not a convenient fact for the Government.

5 Then, if we are following the Government's
6 logic, then Pfc. Manning is the worst employee of all
7 time for WikiLeaks, the absolute worst employee. They
8 gave him the guiding light, the 2009 Most Wanted List.
9 They told him exactly the 78 items that they wanted.
10 And this employee of WikiLeaks managed to at best
11 search for four of those items.

12 And he had unlimited access, unlimited
13 ability to do everything he needed. He has to be the
14 absolute worst employee ever because of all the access.
15 If he actually was using this for guiding light, you
16 wouldn't see four out of 78. You would see more like
17 78 of 78.

18 We can show every one of those things. And
19 the very first thing, General Order Number 1, the
20 easiest thing to access, not only did he pull it and
21 access it, but we can show he sent it, if he was

1 actually using that as his guiding light.

2 But that's not a good fact for the
3 Government. So let's ignore that. Lets ignore that
4 he's the most organized analyst, that he gets his job
5 done, let's say when it comes to WikiLeaks and he is
6 not very organized and he doesn't get his job done.

7 Then this makes sense.

8 So when you look at the Government's
9 version, their story not only doesn't make sense but
10 their story is not even internally consistent. That is
11 typical of the Government's story. They ignore what is
12 the consequences of a certain argument to another
13 argument of theirs.

14 There's a phrase, thinking short instead of
15 thinking long. They think short every instance. They
16 just think, how does this prove this one little thing.
17 And they ignore the fact that it really does disprove
18 something else in their argument.

19 You really have to ignore it or you have to
20 listen to them and say, okay, well, for this version of
21 the events I will accept it, that he's very organized,

1 very good soldier, does his work. But over here I'll
2 ignore the fact that he didn't do anything when it came
3 to the 2009 Most Wanted List.

4 The two don't match up. And when you talk
5 about the motive, the ultimate motive, the only thing
6 you can pull from them for a motive is the Showman
7 stuff and the not being loyal to the country, being a
8 traitor.

9 None of that is based upon any evidence
10 that actually came out in the case. It's as if the
11 Government heard a whole different case from what
12 actually came out through witnesses testimony.

13 None of that bears out. If he were a
14 traitor, somebody who sole focus was to hurt the United
15 States, or wanted to help WikiLeaks, you would see a
16 lot more disclosures. You wouldn't see the discrete
17 disclosures. You wouldn't see the things that dealt
18 with loss of human life.

19 So what I will do before I go into this now
20 is take a 15 minute break. I'll talk now having
21 discussed the Government's version, just talk through

1 the charges.

2 THE COURT: All right. Any objection to a
3 15 minute recess?

4 MR. FEIN: No, Ma'am.

5 THE COURT: Court is in recess.

6 (Brief Recess)

7 MR. COOMBS: For the second half I'm going
8 to transfer to talk about the charges. Although it is
9 a little unusual, I would invite questions from the
10 Bench during this time period. If there's anything
11 that I say that you have questions on, I think it's
12 important, as we go through these charges, that I don't
13 fail to answer a question for the Court.

14 So to start off, before we actually get
15 into any of the offenses, Pfc. Manning was young and
16 naive. That is the Defense's position. But the
17 Defense's position also is that he wasn't wrong, not in
18 the sense of wrongful in giving information, but he
19 wasn't wrong in the sense of whether or not this
20 information could cause damage to the United States or
21 be used to the advantage of any foreign nation for the

1 prohibited purposes.

2 Our position is that he was not wrong with
3 that fact. And what we ask this Court to do is
4 something that the Government never did yesterday, is
5 actually look at the evidence and then look at the
6 charge documents for the 793 offenses, look at that
7 evidence and then compare that with the statements from
8 the OCAs and the other individuals that say this stuff
9 could be so terrible, could cause all these various
10 damages.

11 No one wants to question the OCA. If we
12 learn anything from this case, it's that nobody wants
13 to question the OCA. Even my own experts, when they
14 are on the stand, will say, look, I will disagree maybe
15 privately with an OCA, but I would never publicly
16 disagree with an OCA.

17 Why is that? In a classified evidence case
18 the OCA's opinion is -- no one can question it. It is
19 beyond reproach.

20 The OCA has a final say. And when the OCA
21 says, hey, this is classified, this could cause serious

1 damage or this could cause damage or some damage, that
2 is the OCA opinion and we should not question that.

3 Why do we even have a 793 offense that
4 involves anything but OCA's determination once the OCA
5 makes the determination -- done.

6 THE COURT: I will ask you one question.
7 What is a dust 1?

8 MR. COOMBS: These are the buzz terms that
9 Major Fein uses throughout this case. TTP is troop
10 movement, close air support, weapons systems, unit
11 identifiers, dust one, basically for our missing
12 soldiers.

13 These are the procedures we use to recover.
14 The whole thing stands for an acronym which I don't
15 have memorized. It is basically to find missing
16 located soldiers. They pointed to a particular SigAct
17 that they say gives away our dust 1 procedures.

18 When you look at that, these buzz words,
19 TTP, troop movement, close air support. If all you do
20 is listen to the buzz words, oh, that gives away our
21 TTPs, that could cause damage. Therefore, clearly this

1 meets the requirement for 793. What we ask the Court
2 to do is actually look at the evidence and look at the
3 opinion of the OCA. And in this situation, at least in
4 this courtroom, the OCA's opinion is not above
5 reproach. The OCA's opinion is, according to my
6 co-counsel dust 1 stands for duty status whereabouts
7 unknown.

8 THE COURT: Thank you.

9 MR. COOMBS: When you look at that, those
10 buzz terms by themselves do not mean anything. It's
11 only if you can actually tie that to something. But
12 the OCA doesn't do that. None of the governments
13 witnesses did that. They talk in generalities and they
14 want this Court to follow along with them.

15 But now is the time to say, the Emperor has
16 no clothes when it comes to this stuff. Because, when
17 you look at these items that are charged, Pfc. Manning
18 did selectively choose what he was going to disclose.
19 And the items that he chose were items that we should
20 know but would not cause damage to the United States.
21 Would not be used to the advantage of any foreign

1 nation. Certainly not when it's out in the public.

2 So let's look at each of the offenses. The
3 Apache video, Specification 2 of Charge 2. What we
4 know about that.

5 It wasn't classified. And it wasn't
6 closely held. We know it wasn't closely held because
7 Mr. Finkel clearly had a copy of the video. Now
8 granted he didn't quote the entire video in his book.
9 That might have been kind of a boring passage for him
10 to do that. Because the Court has seen the verbatim
11 transcript of the video.

12 He did quote the video verbatim when he
13 does quote it in his book. So it's clear he had a copy
14 of it. And the sources and message for Finkel's book
15 talks about the fact that only two occasions did the
16 military ask him not to disclose or talk about
17 something because of it being sensitive.

18 So by logical inference from that, when he
19 does talk about the video, this was not one of those
20 things. You see the CentCom FOIA response. That talks
21 about, in response to Reuters' request, it doesn't

1 identify a video at all. It identified what they
2 found. Not a video.

3 Something that Reuters wanted. PE 15, the
4 CD in Pfc. Manning's shoe is labeled Reuters' FOIA
5 request. Pfc. Manning was clearly made aware of that.
6 He did research. He was made aware of Finkel's book
7 and the fact that was quoted verbatim. And he clearly
8 was aware of the fact that Reuters wanted it.

9 And when the Government talks about the
10 edits and how somehow WikiLeaks edited this for maximum
11 exposure, worst effect, those edits were for Reuters.
12 It was the Government that asked you to see the last
13 portion.

14 Initially the Defense wasn't going to play
15 the last portion of the video. But the Government
16 wanted you to see the entire video. When you look at
17 the entire video, that is a lot more damaging evidence
18 of kind of a disregard for human life. People walking
19 into a building, who happened to be carrying a weapon,
20 one person, and perhaps at that point the rules of
21 engagements were such that, if they were carrying a

1 weapon, they were targeted. A lot of reasons someone
2 might carry a weapon in Iraq at that time period to
3 include self-protection.

4 The person walks into a building. They
5 don't have any idea who is in that building. If that
6 person walks in, we see other people walk in without
7 evidence, and yet that building is targeted.

8 So what the Government wanted you to see
9 the rest of that wasn't edited out, wasn't something
10 that made the Government look good. It was actually
11 further evidence of a kind of disregard for human life.
12 So that's not evidence of WikiLeaks trying to do
13 anything.

14 And then Defense Exhibit Oscar, the
15 classification review is at odds with Chief Larue and
16 what his opinion is. That's kind of in a nutshell
17 really shows you how subjective this whole realm of
18 classified information is. Very subjective in what is
19 classified, what potential damage could happen or
20 couldn't happen.

21 If you look at Chief Larue and you compare

1 that with Rear Admiral Duncan, there is a difference in
2 their opinions clearly. One says it couldn't even
3 cause embarrassment. The other is, this is almost the
4 end of the world that this has been released.

5 We have seen that even in this courtroom of
6 potential spillages of various things. The idea of
7 what is classified and what harm can befall us, if
8 certain information gets out.

9 And clearly this Court cannot engage in
10 what is and is not classified. This Court's role is to
11 engage in what would meet the requirements of 793. And
12 at that point, granted, you're put in a little bit of a
13 difficult position of looking at what the OCA say and
14 judging for yourself.

15 But that's exactly what the Defense
16 believes the Court needs to do is to look at the charge
17 document, look at the OCA's opinions and those
18 stipulations of expected testimony from witnesses and
19 then match them up. And just look at that from your
20 own common sense and say, does that make sense to me?
21 Do I, in fact, believe that that could be a result from

1 this?

2 And it's almost like the kids games that
3 were played when you're in grade school of certain
4 rules for our club. And these are rules for our club.
5 No boys allowed. No girls allowed. Or you can't say
6 certain words. And, if you did, there would be some
7 terrible effect that would befall us all.

8 That's the whole classified information
9 realm. And certainly there are secrets that could
10 gravely impact our country. Pfc. Manning had access to
11 those. Talked about human reports. You heard from
12 witnesses the human reports were very, very sensitive.
13 He had access to those from CIDNE-I. Human reports
14 were our no kidding sources. They were the individuals
15 who we were relying upon. We identified them by number
16 in human reports. Not their names.

17 But even the number might give away some
18 information on that because it might talk about where
19 they are from. And Captain Lim talked about human
20 reports, how sensitive they were. That's something Pfc.
21 Manning had access to.

1 So that could be something where you looked
2 at it and you saw what they said, you matched it up
3 yes, I could see that. As we go through the rest of
4 these, these are that type of information. This does
5 speak to how selective Pfc. Manning was.

6 Look at the Farah video. We have heard a
7 lot of testimony about the video. Well, first of all,
8 the Government didn't prove that Pfc. Manning was the
9 source.

10 And not to repeat myself, but there is
11 another fact that the video matched the video, bit by
12 bit for the video from CentCom, encrypted video.

13 And how Mr. Katz got that video the
14 Government wants you to believe it's from Pfc. Manning.
15 But there's no evidence of that. In fact, Mr. Katz
16 could be the source from somebody else and he could be
17 the source for WikiLeaks on that.

18 In order to get to the Government's version
19 you have to kind of suspend your disbelief and again
20 believe that Pfc. Manning's item that he would select to
21 give to WikiLeaks would be something that he himself

1 did not know what it was, could not see it.

2 Special Shaver gives him a more common
3 sense version. And when you look at the video again,
4 take a look at the part where it is classification
5 review on this video. Look at the video.

6 The Court has the ability to look at the
7 video. Look at that video. Match up what he says
8 could happen. How could be used for the prohibited
9 purposes and look at the video. And see, even with an
10 eye towards the Government's version of events, see if
11 you can make that leap to logic to say I can even see
12 what's written there.

13 And certainly, when the OCA says it, you
14 almost want to defer to the OCA. But you can't in this
15 sense, you can't in this case. And the reason why is,
16 the OCA, whether the OCA is military or Department of
17 State, or any other agency, has a vested interest in
18 saying that they got it right with their
19 classification, that their determination was correct.
20 And they have a vested interest in saying that that
21 information could cause various damages.

1 It would be refreshing to see an OCA say,
2 you know what, this was overclassified. This really
3 didn't need to be classified. And the one OCA kind of,
4 in this case he wasn't an OCA, just did a
5 classification review, Donagin on the Apache video, the
6 Government wants you to ignore that fact. We had to
7 fight to get that in.

8 Because that kind of was a out of the
9 normal line opinion. Because the general opinion is,
10 oh, yes, we got it right, when we classified this
11 information.

12 Let's look at the Farah documentation,
13 Specification 10 of Charge 2. The documentation that's
14 charged there discusses a large scale CIVCAK, Civilian
15 Casualty Incident. That incident received worldwide
16 attention.

17 Lieutenant Commander Hoskins said in his
18 review he didn't consider open source material or
19 unclassified publications like various army regulations
20 or field manuals. Didn't consider any of that when he
21 was making his determination whether or not this stuff

1 could cause damage.

2 But just like with everybody else, he asked
3 you to look at the basis of the opinion and then look
4 at the information and see if you can connect those
5 dots. Because much like the Government's case, if you
6 just take it at face value, it's fine. But any closer
7 inspection and it starts to fall away. It really
8 doesn't hold water. And the reason why it doesn't is
9 because this makes sense when you speak in
10 generalities, when you actually say, you know, it could
11 do this because it gives away TTPs.

12 Well, the time to actually why this is the
13 case, why the TTPs would be in these documents where
14 they could express that to the Court. Again, the
15 generality is what they want to give. They don't want
16 you to question it.

17 The next item is the 1030 specifications.
18 This I will spend a few slides on. The specification
19 at issue is here is 13 of Charge 2 and Specifications 2
20 and 3 of Charge 3.

21 The first thing is Wget was not something

1 that was prevented from running. And we could have
2 prevented executables from running on the D6A
3 computers. Soldiers were allowed to add executable
4 files to the computer. We had plenty evidence of that.
5 I'll highlight some of that in the upcoming slides.

6 Even if the use of Wget was unauthorized
7 software, that does not take something from an Article
8 92 violation and make it an access restriction for 1030
9 purposes. And there definitely is a difference in the
10 use of something that might be unauthorized and
11 exceeding your authorized access.

12 The reason why is there no such thing as an
13 implicit access restriction. You have to knowingly
14 exceed your authorized access. There can't be an
15 implicit access restriction where we are going to fault
16 you for not knowing that this was an access
17 restriction.

18 It has to be some warning or some way in
19 which you clearly had to, you violate an access
20 restriction that was laid out when AUP under the
21 Court's ruling or you exceeded, you bypassed some

1 technical or code based restriction.

2 What is important here is we don't have the
3 AUP. The Government could never produce an AUP from
4 anyone in the brigade that signed an AUP while in Iraq.
5 They rely upon the general 25-2 version, but we know
6 from the testimony of Captain Chereco that we can't
7 rely upon that version.

8 When words matter, not only on the charge
9 sheet but they really do matter when you're saying
10 there's an access restriction. And the access
11 restriction here you would find, if you found one,
12 would be in an AUP. That's something that the
13 Government has not and cannot produce.

14 So what do we know about what you could do.
15 Well, we know from the unit there were no real rules.
16 There were no rules. Colonel Miller testified about
17 the fact there were no restrictions on downloading. I
18 asked him, was there any sort of restriction on how you
19 download information? His response was what, like
20 click open, and he didn't complete the phrase. And I
21 said, yeah and save. I said, yes. He said, no.

1 Well, that's problematic for the
2 Government's theory. There's no restrictions on
3 downloading from the Net Centric Diploma Database.
4 Captain Lim testified he gave the link. He didn't put
5 out any restriction. Government wanted to make it seem
6 as though you could only go there and look at stuff
7 that dealt with Iraq.

8 And I asked Captain Lim that question.
9 Captain Lim said, no, you could explore things, as an
10 all source analyst that's why you would. I wouldn't
11 prohibit a soldier from doing that. And you could read
12 other things just as general knowledge, if you wanted.

13 Even Court asked, if you were bored at
14 sometime, didn't want to watch a movie, not listen to
15 music, just wanted to surf the SIPRnet and look at
16 things, could you do that? And the answer was, yes.
17 There were no restrictions on that.

18 There's also importantly no training on any
19 so-called download restrictions. The Government has
20 created that out of whole cloth in order to again kind
21 of fit with their story. But there is no click, open

1 and save training or any sort of restriction. Captain
2 Cherepko talked about the fact that Pfc. Manning didn't
3 need anything to gain access to Net Centric Diploma
4 Database. That was because the only restriction was
5 that you had to have SIPRnet access. That is it.

6 Chief Ehresman talked about no restriction
7 on using executable files from CD or a desktop if used
8 a shortcut to download files from the SIPRnet. The
9 Court asked that question. Was there any sort of
10 restriction on using executable file to download
11 information from the SIPRnet? Answer, no.

12 Mr. Wisecarber, another great source for
13 any sort of access restriction. He testified about no
14 restrictions on the manner of downloading. No
15 restrictions even on access. The only access
16 restrictions were that you had access to SIPRnet.

17 And importantly what he said was, the
18 Department of State relied upon the receiving agencies
19 for any sort of restrictions. And the reason why was
20 their purpose was to share the information. And then
21 we got into the Government trying to paint a click,

1 open and save restriction. They wouldn't want to
2 qualify Mr. Wisecarber as an expert. Because when he
3 did talk the database and creation, all he could say
4 was, that was contracted out to an independent
5 organization. CIDNE. CIDNE was the one that designed
6 the data base. He wasn't aware of any sort of
7 restrictions.

8 And then they talk what's your experience
9 with that, when you went there? My experience was that
10 you went there, you typed in something, you can click
11 on cable, open it up, do anything you wanted with it.
12 He did admit that you could have multiple screens, if
13 you wanted open to print and save.

14 But again, no restrictions. And then the
15 Government's own witness Special Agent Shaver talked
16 about Wget. The Government spent a lot of effort and
17 time in trying to make Wget a nefarious program. What
18 did Special Agent Shaver say about it? It doesn't do
19 any greater access. He said, look, it didn't do
20 anything about automate the click, open and save
21 process, to the extent we are going to follow that red

1 herring to mean some sort of access restriction. It
2 just automated it. That's all it did. Wget accessed
3 each individual cable individually in order to open and
4 save it.

5 And he said it wasn't a nefarious program.
6 It was just a simple command line program. So when you
7 think about that, Wget, what it did was just automate
8 the click open and save, it sped up the process
9 certainly.

10 And what the Government wants to now read
11 into that is, even though you can click open and save
12 you couldn't automate that. Because you automated that
13 you made it much faster. Now you exceeded your
14 authorized access.

15 Well, again, there's no access restriction
16 laid out anywhere that said that was a problem, that
17 you couldn't do that. And importantly, when we talk
18 about the things that you could do and couldn't do, the
19 aspect for the 1030 is, Pfc. Manning would have to
20 knowingly exceed his authorized access.

21 And that is where we have a wealth of

1 information to show that what was and was not
2 prohibited in the T scale was really subject to
3 interpretation on who you asked.

4 Captain Ki was probably the best witness to
5 present the fact that there was just confusion. He
6 didn't know for sure. He was new to the whole thing.
7 Didn't understand what was or was not acceptable, asked
8 people. Never got a good answer.

9 The reason why he didn't get a good answer
10 is because nobody was consistent. Colonel Miller,
11 Specialist Showman -- music and movies were good. Not
12 a problem. WOR, moral welfare. Captain Lim, movies
13 were bad, prohibited. Music, on the other hand, that's
14 fine.

15 Captain Cherepko, well, the person who is
16 the assistant S6, the person who really is probably the
17 subject matter expert on what is and is not allowed
18 says music and movies were bad, that he did everything
19 he could to remove these things, that there was no
20 authorized T Drive, Captain Cherepko S6 approved music
21 musics and games and executable files. He testified

1 that he removed that stuff. When he did, it would
2 magically reappear. And he went to the chain of
3 command to complain about that, to tell them that this
4 is information assurance problem. And nothing was
5 done.

6 The Government yesterday made some sort of
7 argument that there was no evidence that a particular
8 soldier added something to the T-drive. Well, there's
9 plenty of evidence that unit added stuff to the T
10 Drive. Captain Cherepko said, I kept deleting it. It
11 kept going back. It never stopped until we unplugged
12 the system to redeploy.

13 Chief Balonek, he didn't know movies and
14 music were bad or not. Madaras thought they were
15 allowed. Milliman said, no music, movies or games.
16 But importantly Milliman said, even though there are no
17 movies, music or games, I couldn't tell them to take it
18 off. They didn't work for me. I worked for them.

19 So even when it came to the D6A computer,
20 there was not only a lack of understanding what you
21 could do, but the people who would have, I guess the

1 authority, didn't even believe they had the authority
2 to make a change.

3 And then we added more confusion based upon
4 the Government's witnesses. Mr. Weaver, the expert
5 from 25-2. And we asked him a question of, well, you
6 know, would this be allowed, could this be allowed,
7 music, movies and games. And his response was telling.
8 His response -- do you want the book answer or do you
9 want the real world answer?

10 And that's because there's a difference
11 between the two. And we see that also with Chief
12 Balonek. Things were different deployed as opposed to
13 garrison. Deployed there were no rules. Deployed
14 nobody was really worried about information assurance.
15 Deployed people were adding things to their computer
16 that apparently garrison would not have been allowed.

17 And when you look at the 25-2 prohibition,
18 always without authority. It lists those things and it
19 says, without authority. And then the question has to
20 become, was there authority?

21 And MIRCchat is a good example. MIRCchat

1 is an executable file. No dispute on that. MIRCchat,
2 according to Mr. Kits, Government's own witness, who is
3 the D6A expert said it was not authorized as a baseline
4 package. It was not authorized.

5 He says, the commander must request it. He
6 must request to add a particular program. That's
7 different from Mr. Milliman. Mr. Milliman said it was
8 authorized on the D6A and I did put it on.

9 Colonel Miller talked about, I never asked,
10 never made a request for MIRCchat to be added.

11 When you look at the executable files and
12 games, and look at what the witnesses said, here you
13 have, again, further confusion. Captain Cherekko, you
14 know, made it seem as if you could use executable files
15 but only from CD, if that's somehow different than
16 putting it on your desktop.

17 If you did having something on your
18 desktop, it could only be a shortcut to the CD. Little
19 confused by that. And then you look at the rest of the
20 witnesses. They talked MIRCchat being added on their
21 computer importantly by whom. It was Pfc. Manning that

1 added MIRCchat on their computer. Specialist Showman
2 said that, Sergeant Madaras said that. It wasn't Mr.
3 Milliman. And Captain Fulton said MIRCchat was added
4 to her computer but she wasn't for sure who did it.

5 All of this kind of shows that nobody
6 really truly understood the rules. No one truly
7 understood what was and was not prohibited. And there
8 wasn't any clear line of what you could and could not
9 do.

10 And really the problem with that is Captain
11 Lim talked about there was no SOP for the T SCIF. The
12 SOP would tell you what you could and could not do.
13 And so without an SOP and without any clear rules,
14 there's no way that Pfc. Manning would know that using
15 an executable file that he was authorized to use in his
16 mind was somehow now exceeding authorized access.

17 Look at the Article 92 offense now for
18 covering his tracks. This is the trying to access or
19 get the password. And here there's a problem with the
20 Government's theory. The Government says, you know,
21 he's trying to get this and they point to the rainbow

1 table searches and they also point to asking Press
2 Association if they could assist in some way. It's to
3 basically be able search with impunity according to the
4 Government.

5 And then, lucky for us he doesn't get that.
6 If he were to have gotten that, that's when you get a
7 lot of stuff, with impunity, no one would find out.
8 Well, the problem with kind of that logic you would
9 still be able to show on the receiving end where stuff
10 was taken, you know, what was accessed.

11 You wouldn't be able to show the user, but
12 probably the .22 .40 computer. Not signing in as
13 yourself doesn't give you the ability to do things with
14 impunity. It might give you plausible deniability that
15 it wasn't me, but not with impunity.

16 And the idea of breaking the passwords, Mr.
17 Milliman testified about that. He testified that when
18 the unit first got there, the S6 did break his
19 password. And what was the purpose for that? Well,
20 they didn't want to have to go to him in order to add
21 certain things, printers or added software. He didn't

1 tell them, hey, these machines aren't yours. I'm the
2 person who is only one authorized to do this.

3 Specialist Showman testified about the fact
4 that Pfc. Manning was asked to break passwords. And
5 talked about the fact he could do it. And I asked her,
6 well, did anyone at that point say, wait a second, you
7 can't do that on our computers. The answer was, no.
8 Why? Because this was yet another example of there was
9 no information assurance rules. This is another
10 example of a difference between the book answer and
11 what was happening in the real world. The real world
12 was no one would care what you did once you added it.

13 Let's talk about the 641 offenses.

14 Understanding that we have an outstanding motion on the
15 issue, but when you look at what the Government
16 charged, the Defense's position is that they failed to
17 prove and meet their burden in two instances. They did
18 not prove that Pfc. Manning stole, purloined or
19 knowingly converted the charged databases. And they
20 also failed to prove that he used an information system
21 in violation of 25-2. And for the information

1 system --

2 THE COURT: Does that go to 641 offenses?

3 MR. COOMBS: The Spec 4 is his pulling down
4 information, using that in a GAL. Using that for, in a
5 way other than intended. Basically doing something in
6 violation of the information system.

7 So let's look at the value. Because for
8 641 our position they haven't proven that the Pfc.
9 Manning stole, purloined, knowingly converted
10 databases. I think we all can agree that the evidence
11 shows that the databases were never taken out of
12 custody and control of any of their ownership interest.

13 So the witnesses testified they always had
14 access to the CIDNE database, always had access to the
15 Net Centric Diplomacy Database, the GAL was never
16 taken, the DABs were never taken. From the database
17 standpoint we know that the Government has failed in
18 that group.

19 Now if the database means the original
20 records, and understanding there's a, under the Court's
21 ruling for a digital information it doesn't seem to be

1 a difference between an original and copy. I want to
2 address it in this way. For the original records
3 because that's where the value comes in.

4 Mr. Bora, for CIDNE-I and CIDEN-A,
5 testified about the millions and millions and millions,
6 but that was not for the record production. That was
7 all for the support of the database. So you don't have
8 anything from him on the original records for CIDNE-I
9 or CIDNE-A.

10 The DABs, there is no evidence of value
11 from Mr. Motes. And the reason why I say that, and
12 argue that, is using the Court's own 27-10 example.
13 Mr. Motes testified about the amount of time, 60 hours
14 or so, that went into the creation of a single data.

15 And then the Government, with their math,
16 valued that, they are worth hundreds of thousands all
17 these.

18 The 27-10 example. If somebody steals
19 AR27-10, even the original, say the original is
20 somewhere and that person stole the original 27-10, the
21 very first creation of it, as the Court asked, you

1 would not value that with all the hours that were spent
2 from a Judge Advocate reviewing and drafting it, all
3 the hours spent by somebody else getting information
4 together and group sessions on what should be in 27-10,
5 what should not be. None of that stuff would be used
6 to prove value.

7 That's what Mr. Motes' testimony is about,
8 the hours spent collecting and harvesting and putting
9 this information together. That is the 27-10. That is
10 not value of the record.

11 The record value would be somebody coming
12 in and saying, all right, somebody sat down and they
13 typed that DAB, and it took them X amount of time.
14 That was the creation of that record. That would be
15 the value of that record.

16 The Motes stuff, if at all, if you could
17 make that logic work, would be somehow valuing the
18 information within the record. But there's no case law
19 for valuing information as cost of production.

20 And so Mr. Motes' testimony is the 27-10
21 example.

1 Mr. Wisecarber didn't testify about any
2 valuation. All he said was, there was somebody who got
3 paid around 70,000 to maintain the database. So his
4 testimony doesn't give you any sort of valuation for
5 the original records.

6 The GAL is very similar to Mr. Motes. The
7 testimony that you got from Nixon and Chief Rearrd
8 talked about, I think it was mainly Chief Rearrd,
9 talked about the 10 to 15 minutes or so that it took to
10 create each record. Government used that to
11 extrapolate some crazy number of how much the GAL would
12 be worth from a cost of production standpoint.

13 But you got to look back at that testimony
14 and see. What he said essentially was, the time that a
15 soldier comes in and says, hi, I'm here in Iraq. I
16 need to get an email. And they say, okay, here's the
17 form. Thank you. Fills out the form, hands it back to
18 them. Takes the form back and then, okay, let's create
19 this email address for you to make sure you're okay and
20 then go on your merry way. That is 10 to 15 minutes.

21 That's the 27-10 example again. The time

1 that it took for one soldier to fill out all his
2 information on form and the time that it took for that
3 soldier then to hand it over to somebody.

4 What you would value, if you are truly
5 valuing the creation of a particular email address, and
6 that was the original record that was taken, that email
7 record was taken, it would be the time that it took
8 somebody to enter it into the GAL. That would be where
9 that cost of production would be. It wouldn't be all
10 the stuff before that. Because, again, that's a 27-10
11 example.

12 If you were valuing that stuff, if I'm the
13 Government, and I could value that way, I would say,
14 well, I want to value when he walks in to say, hand me
15 the form. I want to value because he couldn't have any
16 email address unless he went to Iraq. So let's value
17 the cost of plane fight to get him over to Iraq, in
18 order to then go up and say, I need an email address.

19 That's why the cost of production in all
20 the 641 cases are the cost of production of that
21 record. It's not all this all removed example. The

1 government couldn't give any case law to support that
2 and the Court correctly said you weren't going to
3 consider that type of evidence.

4 So now the value of a copy. Defense's
5 position is that what was taken in this instance was
6 not the database, was not the original record but in
7 fact, was a copy of those records.

8 Understanding that the Court indicates, at
9 least from the Defense's understanding of the ruling,
10 that when it comes to digital evidence there's no
11 difference between original and copy.

12 The Defense though maintains that, if I
13 had, just because digital it shouldn't matter. If I
14 had a picture of something in front of me, like a
15 photograph, and I took a photograph of it, that
16 photograph didn't exist until I took a photograph.
17 Clearly, that photograph is a copy.

18 And so in this instance for each of these
19 databases the items that Pfc. Manning took did not exist
20 until he created them. But it's clearly a copy of the
21 original.

1 And there's been no evidence of value for
2 any of the databases. And the evidence that you would
3 expect to see here would be then how long, when you
4 show from the computer forensics, how long it took him
5 to create the copy.

6 So then, you might take his pay at the time
7 he created and value the amount of time it took him to
8 create it, if they could show the CD that he used to
9 burn the information was the Government's CD then cost
10 of the CD.

11 And potentially cost of time they could
12 value the time on the actual computer. That's how you
13 would get to the cost of production for a copy.

14 Now, when it comes to information. So now
15 this is where the Government thinks, okay, we have been
16 able to bring Mr. Lewis in. Here's the problem, of
17 course, the Defense maintains were not put on notice
18 for information.

19 But even if the Court is going to go with
20 information, look at what you have. You have for each
21 of these things the guess of Mr. Lewis. And what do we

1 know about Mr. Lewis? He didn't initially know why he
2 was even testifying. When the Defense went to him on
3 multiple occasions prior to his testimony -- I don't
4 know what I am coming to testify about. I have no
5 clue.

6 He admitted on the stand. A month before
7 he testified he said he could not put a value on
8 classified information. He didn't know how to do that
9 and he wouldn't be able to do that.

10 And even days before his testimony, a week
11 before he got on the stand, it was actually like a
12 Friday before he got on the stand for the following
13 week, he did not consider himself to be an valuation
14 expert. The Court did not accept him as a valuation
15 expert.

16 He admitted on the stand that he had never
17 valued information before during his entire career.
18 Never valued any information. This was the first time
19 that he was going to opine as to the value of
20 something.

21 And here is where the Defense argues that

1 this Court cannot use Mr. Lewis as a basis to find Pfc.
2 Manning guilty of any of the specifications for value,
3 in that Mr. Lewis, when he got on the stand and he
4 testified, we know the documentation that he used,
5 there was the ability for him to verify the guess that
6 he made.

7 There was the ability for him, based upon
8 the key word searches that he used, to then go back to
9 the key word document that he found and verify where
10 that information was to compare apple to apple. I'm
11 going to just use -- I'll use apple.

12 Let's say the key word he used was apple.
13 Before we see this apple and it's sold to a particular
14 enemy, it said apple for \$100. And I see in this
15 document now that the Government has given to me of the
16 charge documents for Pfc. Manning the word apple is in
17 there. So in my mind it would be worth \$100.

18 Well, the problem with that is, you have to
19 go back to that original purchase and see was that
20 apple they are talking there the same thing, not just
21 in a general area, but the same thing to where you

1 could say with any sort of confidence, oh, yes, they
2 would pay for that. He had the ability to do that.
3 Didn't do that. Didn't verify his guess.

4 And then the other problem with this whole
5 area is, when you prove valued information using the
6 thieves market, is using a thieves market where you
7 have a willing seller, willing buyer and what all the
8 641 cases generally support is that the thieves market
9 then creates the value of the information.

10 But this is not a thieves market. Even
11 under the witness' own testimony this is an artificial
12 market. This is a market in which the witness admitted
13 the person could be getting money for the establishment
14 of the relationship, not the information.

15 And again, if you went back to verify his
16 guess, he could be able at that point to say
17 intelligently, was this an example where the money paid
18 for apple was for apple or was it, in fact, for an
19 establishment of a relationship?

20 And this whole artificial market, again,
21 using just common sense, is kind of the spy versus spy

1 type market of, we want to see what the enemy is
2 interested in finding out. The enemy wants to see what
3 we are willing to sell.

4 And if you carry this to its logical
5 conclusion, this whole market, again, is artificial,
6 nobody is disputing that when we choose to sell
7 something, it's because this is not sensitive
8 information. We are okay with the enemy having it.

9 It's not the type of information that would
10 befall like a terrible thing to our country to sell it.
11 We are more interested in seeing what the enemy wants
12 to know or what another country wants to know from us.

13 If you apply that logic for a moment from
14 641, this is, again, an example of thinking short
15 instead of thinking long. You apply that logic to 641
16 saying, you know what, Mr. Lewis looked at this
17 information and he said, this is the same type of
18 information we would sell, because I would look at the
19 key word thing, and my guess is 10,000 here, 3,000
20 here, 1,000 here, 10,000 here, 5,000 here. Well, now
21 the 641 offenses, but what does that say about the 793

1 offenses then?

2 If this is the type of information we would
3 sell because this is not something we are worried about
4 that could cause damage, because we're not going to cut
5 off our own nose to spite our face by selling something
6 that actually could cause damage to the United States.

7 If this is the same type of information,
8 then how, for a 793 offense, could this cause damage.
9 Mr. Lewis, looking at this information, in his 29 years
10 of counterintelligence said the stuff he saw looked
11 very similar from a key word standpoint to the
12 information we would sell.

13 So, if the Government wants to use him to
14 establish value, then they have to accept his value
15 when it comes to, this is not the type of information
16 that could cause damage to the United States.

17 That's the fair implication from his
18 testimony. But, again, that's thinking short, not
19 thinking long.

20 So let's look at the USF-I GAL. Chief
21 Nixon testified there are no rules son downloading .mil

1 addresses. And then he caveated that a little bit by
2 saying well, it would depend on your intent. There are
3 no rules on that.

12 And we encourage that. We get CAP readers
13 out, we sell them. And the whole idea for that is
14 because you can work at home. You can check your
15 army.mil address at home. So having this on a personal
16 computer does not make it wrongful.

17 And stealing and convert. What evidence?
18 No evidence that Pfc. Manning did anything with these
19 emails addresses other than see if he can do it, save
20 it on the computer, supply room computer, save it on
21 his first computer and then delete it.

1 If the Government's evidence -- or their
2 argument is that he did this for a nefarious bad
3 purpose, then the only reason you would do that
4 stealing or convert is apparently to give it to
5 WikiLeaks.

6 If that were case, where is there evidence
7 of spear fishing? They try to get Nixon in and talk
8 about spear fishing and they are going to try to value
9 email addresses based upon spear fishing.

10 Well, again, if Pfc. Manning actually did
11 something with these email addresses, you would have
12 evidence from the Government of soldiers coming in
13 going, you know what, I spear fished. I receive a lot
14 of spam. My email was hacked or whatnot.

15 But they don't have that. Again, when you
16 look at the tweet .mil addresses, it wasn't the GAL.
17 What do we know about the GAL? These are temporary
18 emails addresses. The Government tries to basically
19 downplay that fact, only be good for at most a year by
20 saying we try to keep the same naming convention.

21 Well, you know, that may be a fact. And if

1 that were true, and let's suggest that is true, then
2 that's the Government verifying how this information
3 can be used to harm the United States or to harm these
4 particular soldiers by their own admission that you
5 kept the same email addresses.

6 There's been no evidence really on every
7 one. Of these emails addresses are the same. What is
8 important here is that these email addresses were
9 temporary deployed email addresses. He didn't do
10 anything with them.

11 If the Government had evidence of him doing
12 something with them, you would expect to see that. No
13 evidence of an intent to steal or convert.

14 And then with regards to value. The actual
15 value of the email addresses, as I said, they are
16 temporary. And Chief Bruliard's testimony really
17 doesn't value the email addresses. It's the value of
18 the process, kind of like the 27-10 of creating it.

19 And Mr. Lewis' testimony is speculative at
20 best. He does a kind of a shot in the dark on each one
21 of these items. It's almost as if he has a dart board

1 and he's throwing a dart against it and the only number
2 that that dart can land on is something greater than
3 1,000.

4 So that's all that matters. He gives a
5 rough estimate. Of course, he caveats that with this
6 is a conservative estimate, even though he's never
7 valued information before.

8 Let's look at the DABs now. Specification
9 in Charge 2. Colonel Davis testified about the Dabs.
10 He basically defined those as baseball cards. It
11 wasn't his term. It was a term that was carried over.
12 But when you look at those, take a look at the charge
13 DABs. Only five of them. The court can read that and
14 see in that is this the type of information that could
15 be used for the prohibited purposes?

16 What do we know about this? We know that
17 the Guantanamo task force reviewed, looked at a lot of
18 stuff. And the DABs were such a very, very small
19 portion of the information, which supports Colonel
20 Davis' opinion that these things really weren't worth
21 the paper they were written on.

1 Then you look at the CSRTs, and the
2 administrative review boards that were released. You
3 take a look at the information that's in there that was
4 declassified and you see, based upon the highlights of
5 Colonel Davis, that is a lot of information within each
6 of these DABs. The ones that there is no information
7 highlighted is because there is no CSRT or ARB to
8 highlight it from.

9 Take a look at the information highlighted
10 and compare that with the other DABs, the two DABs
11 there are no highlights essentially and you see it's
12 the same type of information that was determined not to
13 need any sort of classification.

14 Four of the five individuals have been
15 released. And when you look at, again, the
16 un-highlighted portion and then compare that with the
17 classification review and see if, the Court looking at
18 that, can follow the logic of how this could cause
19 damage, how it could be used for prohibitive purposes.

20 And the argument, unfortunately for the
21 Government, is these are not the type of documents that

1 should qualify under 793 purpose. These DABs were, in
2 fact, just simply background information and they were
3 not reliable.

4 Colonel Davis talked about that, about how
5 they were unreliable and how they really weren't
6 depended upon, not just for prosecution purposes but
7 they just weren't considered reliable.

8 Now let's look at the CIDNE-I and CIDNE-A,
9 Specifications 5 and 7 of Charge 2. Again, the
10 Government throws out a lot of buzz words, the TTPs,
11 the playbook, this is our playbook. Now the enemy
12 knows what we know. Now the enemy can guess what we
13 are going to do.

14 Well, what are the realities of these
15 documents? Everyone talked about the fact that SigActs
16 are historical documents. They talk about what
17 happened in the past, kind of the five Ws -- who, what,
18 when, where, why and how, so one H.

19 So you look at that and it talks about
20 things in the past, but it records events that
21 obviously the enemy was involved in for the most part.

1 These are events that are observable by the
2 enemy. And Pfc. Manning understood that fact, when he
3 used the SigActs. And the testimony that we have is
4 that the enemy adjusts their TTPs all the time and we
5 then we adjust for that. What may be true a few months
6 ago isn't necessarily true now.

7 And that's why Mr. Hall is important. He
8 talks about the SigActs themselves aren't what's truly
9 valuable. It's the analysis. It's what you use the
10 information for.

11 And that is how you can create something to
12 do predictive analysis. And the Government wants to
13 say that, well, the enemy has the same ability. And
14 take a look at Commander (inaudible) discussion of AQ
15 and AQAP and how it generally progressed.

16 What is clear is, if you look at this stuff
17 and you compare the classification review and you see
18 how they say this could harm the United States, you
19 actually read the documents. The harm, what they run
20 around saying this could do damage is kind of like the
21 chicken little yelling the sky is falling. But there

1 is no connection.

2 And the reason why there's no connection
3 because, again, they rely upon the generalities of
4 TTPs, of enemy would know how they did damage. Common
5 sense would say that when you have an EFP and something
6 happens, the enemy sets it off, they see you how you
7 responded.

8 Common sense also knows that the enemy as
9 for what we do and we are constantly adjusting for what
10 they do. Common sense says, the historical document,
11 the reason why we use this is for the ability of an
12 analyst to take that information and create something
13 that separate and apart from it.

14 And that's the knowledge that Pfc. Manning
15 did not possess. He was learning that, but they said
16 he was not very good at that. Captain Fulton said he
17 was not very good at that. Yet the Government now is
18 trying to say this gives away our playbook. If it
19 actually gave away our playbook, here's another
20 inconvenient fact of Government. We got from the Ft.
21 Leavenworth witness, who talked about the fact that

1 their job is to put out rapid adaption stuff out to the
2 field to save lives, to ensure that commanders on the
3 battlefield get the latest and greatest information to
4 where they don't fall into any sort of trappings.

5 If this CIDNE-I and A gave away our
6 playbook, you better believe there would be a call
7 update. Scream out there, hey, they know our playbook.
8 They know that when you do X, that they can do Y and
9 they will win.

10 But there is no call update. There's no
11 information even if the Ft. Leavenworth witness says,
12 you know, independently I searched to see if there was
13 something. And then we went back to that witness on
14 multiple occasions to say, any updates. It's called
15 working on anything. I don't know. And then, as he
16 testified, his boss looked and said, no, we are not
17 doing anything.

18 That single fact should be enough to tell
19 the Court that the amount of sky is falling argument
20 coming from here doesn't hold water. Because you would
21 see the call update. That is their sole mission.

1 So either they are totally failing the
2 United States Army or they really wasn't anything in
3 the SigActs that we are concerned about.

4 Let's look at the ACIC document.

5 Specification 15 or Charge 2, was essentially a
6 collection of open source information. When you look
7 we have the unclassified version. You can read it.
8 Essentially it's just a reflection of things you could
9 find on the internet about WikiLeaks.

10 And the key thing here, this wasn't a
11 requested document. Not something that we were asking
12 for because we identified them as a threat. This is a
13 kind of a think piece. Mrs. Glenn testified about
14 that.

15 They have different ways of doing things.
16 They can get a request piece where they actually are
17 responding to a concern from the field or they
18 apparently to occupy their time come up with think
19 pieces. This was the latter.

20 This piece was based upon a whole bunch of
21 assumptions and presumptions. But no real sources. My

1 co-counsel asked her about sources, if he knew
2 something, knew about a source, you would cite that
3 source. Yes, do that. That's our whole process.

4 So take a look through the classified still
5 yet version and look at the sources. Professor Benkler
6 testified about how it was basically a poorly written
7 piece that was based upon open source without any real
8 supporting documentation for the conclusions.

9 That in a nutshell is a lot like the
10 Government's case. It is a lot of conclusions but no
11 supporting evidence for the conclusions that they
12 reach.

13 I'm going to talk a little bit more about
14 the ACIC document when it comes to the 104 offense.
15 Again, read that document. See what the Government
16 says could cause damage, how it could be used for
17 creative purposes and make that determination.

18 And with regards to I guess the next area,
19 maybe we could take a brief comfort break and then I
20 could continue. If the Court would like, we could do a
21 lunch break and I would be happy to continue.

1 THE COURT: Approximately how much longer
2 do you think the argument will go? I would prefer to
3 take the break between your argument and rebuttal. A
4 long break.

5 MR. COOMBS: Probably another 40 minutes or
6 so, Ma'am.

7 THE COURT: Government, are you going to be
8 asking for a lengthy recess between the Defense
9 argument and rebuttal?

10 MR. FEIN: We would like a recess between
11 the two.

12 THE COURT: All right. We're going to take
13 a late lunch then today. We will take 15 minutes and
14 we will complete the Defense's argument. Then we will
15 take a longer recess for lunch.

16 Court is recessed until 12:30.

17 (Brief Recess)

18 THE COURT: The Court is called to order.
19 Let the record reflect that all parties present when
20 the court last recessed are again present in the Court.

21 Before we continue on with the Defense

1 closing argument, the Court has been advised that a
2 member of the gallery that has engaged in conduct that
3 requires a specific exclusion from the trial under RCM
4 806B1.

5 The Court determines the conduct engaged by
6 this individual presents a potential for harm or
7 intimidations of Court participants. This individual
8 and the conduct alleged is filed as Appellant Exhibit
9 620 under seal.

10 The Court understands that specific
11 exclusions must be limited in time and scope to the
12 minimum extent necessary to achieve the purpose for
13 which exclusion is ordered.

14 Based on the conduct committed by this
15 individual, the Court finds that exclusion for the
16 remainder of the trial is most narrowly tailored
17 exclusion to protect Court participants from harm or
18 intimidation.

19 Mr. Coombs.

20 MR. COOMBS: Your Honor, the next set of
21 documents are addressed in Specification 3 of Charge 2.

1 And for this it's going to be very important that the
2 Court actually pull these documents and read the entire
3 document. But also read the purpose for the creation
4 of the document, and the purpose of the discussion and
5 see what is being discussed and why it's being
6 discussed.

7 When you compare that against the
8 stipulations of expected testimony, as to how this
9 could cause harm, you'll see that under no stretch
10 could this type of information be used for the
11 prohibited purposes.

12 And it's little bit like, well, even under
13 the Court's instructions, the idea of the harm cannot
14 be remote or fanciful or speculative or farfetched.
15 And these documents, perhaps more so than anything
16 else, crystallize the mindset of just jumping to
17 conclusion of Fact A to Fact D as a logical extension
18 of what happens.

19 And it really reminds me of where I have
20 seen this happen before in the past or where a story
21 would help crystallize why the Court should really look

1 at this type of information.

2 A young couple, new parents, and they bring
3 home a child. The husband works and oftentimes comes
4 home with change in his pockets. And he lays down on
5 the couch and usually falls asleep in front of the
6 television and the change in his pockets come out and
7 fall within the couch.

8 And the mother sees the child play near the
9 couch and is concerned that there is some loose change
10 that has fallen within the cracks of the couch. The
11 mother assumes that loose change equals a dead baby.

12 That that baby is going to grab the change,
13 swallow it and die. And that is the conclusion that
14 the mother makes from the loose change in the couch to
15 a dead baby.

16 Those are real people. The child now is
17 going into high school and the father still goes home
18 with loose change in his pockets.

19 The Government's whole theory on this, and
20 the other arguments for the 793 is like the loose
21 change. They want the Court to see the buzz words. In

1 this case loose change is TTPs, unit identifiers. They
2 want to jump all the way to dead baby without really
3 making that connection. Is it possible? I know some
4 remote, farfetched speculative way, sure it is. Is it
5 likely? No.

6 And that's why it's so important to look at
7 the information and to just not accept the OCA's
8 opinion.

9 Now turning to Specification One of Charge
10 2. This is the cause to be published. This is Article
11 134 offense, which the Government created indicating
12 that Pfc. Manning acted wrongfully and wantonly when he
13 caused to be published certain elements on the
14 internet.

15 Well, first of all, he didn't have control
16 over what would be published -- the best example of
17 that, if the Court goes to PE 123, again, the chats
18 between -- Pfc. Manning -- Press Association, you'll see
19 in the first few pages Pfc. Manning is trying to get
20 WikiLeaks to publish the arrest of the 15 anti --
21 apparently Iraqi Government literature individuals, the

1 people who have been arrested.

2 You'll see there where Press Association is
3 seeking confirmation, ability to confirm the story, to
4 confirm the fact that individuals have been arrested.
5 And Pfc. Manning is asking are you going to publish
6 this? And their response basically is, we'll see.

7 That shows that the control over what would
8 be published was not within Pfc. Manning's control. And
9 really, when you look at the facts here WikiLeaks and
10 its other media partners, New York Times, Guardian, Der
11 Spiegel, they decided what would be published. They
12 decided how much would be published and they decided
13 when it would be published.

14 It wasn't Pfc. Manning. He didn't cause to
15 be published. It was an independent intervening
16 decision being made and it was by the media
17 organizations, WikiLeaks and the other media
18 organizations that made that determination of what
19 would be published.

20 We look at wanton, and I'll talk about the
21 legitimate journalistic organization, because that has,

1 in fact, become a part of the Government's theory that
2 it did make a difference who he gave the information to
3 and he gave to WikiLeaks. In their mind that is not a
4 legitimate news organization.

5 I'll discuss that in greater detail with
6 regards to the Article 104 offense. But he did give it
7 to a journalistic organization and Pfc. Manning did not
8 act wantonly when he did so. He selected information
9 that he believed the public showed know.

10 And the fact that in that wantonness is
11 clear because of the amount of access that he had and
12 when you see when he gave certain items. If he was
13 acting wanton, he would have given them anything and
14 everything. He would have used the 2009 Most Wanted
15 List memo as his guiding light and we wouldn't be
16 talking about, again, a few databases. We would be
17 talking about probably everything on SIPRnet that he
18 could download onto a CD.

19 Also, as further proof of wanton the Court
20 has said that the evidence of the path of the
21 intelligence from Pfc. Manning can provide

1 circumstantial evidence to either prove or disprove
2 wanton. In this case the Defense submits it disproves
3 wanton.

4 The reason why, when you look at the UBL
5 stip of fact and the Adam Gadahn, PE 182. Just talk
6 about Gadahn. Read how that how that information got
7 UBL and why. With Adam Gadahn it is clear. Adam
8 Gadahn says he's asking people to go to WikiLeaks to
9 get the information.

10 If the enemy had to be told to go to
11 WikiLeaks, clearly WikiLeaks was not a source for them.
12 And in this case the wantonness would be if WikiLeaks
13 was, in fact, a organization that provided information
14 to the enemy.

15 WikiLeaks is no different than New York
16 Times, no different than The Guardian, no different the
17 Der Spiegel. It's a news organization that has
18 information. And certainly the enemy can go there just
19 like they can go to New York Times.

20 The path of this information landing in the
21 enemy's hands was because of a, when you look at this,

1 because of Adam Gadahn saying, hey, go out there and
2 get this. Not, hey, WikiLeaks is on our favorite list.
3 Anytime something is posted, we are the first to know.

4 If the enemy actually went to WikiLeaks on
5 a regular basis, the Government would like to suggest,
6 they wouldn't have to be told to go there to get this
7 information.

8 So now let's talk about the 104 offense.
9 Actual knowledge. It is Defense's position that the
10 Government has failed to prove actual knowledge. They
11 failed to prove general evil intent and at most all of
12 their evidence, what it goes to prove is that there was
13 in inadvertent accidental or negligent, in this case
14 negligence disclosure to the enemy.

15 That's what their evidence proves. The
16 evidence doesn't prove actual knowledge. And when you
17 look at the evidence that the Government really relies
18 upon, they rely upon his training as an Intel analyst,
19 35 Fox training, the PowerPoint presentation that he
20 did at AIT. Then there's an argument that, as an
21 analyst he would understand the enemy would access the

1 internet more so than a truck driver. And then
2 finally, the ACIC document.

3 When you look at that information, first of
4 all, the Government's argument really boils down to
5 something like this. You have Pfc. Manning or anyone
6 else, and the Defense would submit that a truck driver
7 for the Army would know that anything on the internet
8 anyone could access. I mean that really is what the
9 Government is arguing, that when he discloses the
10 information to the world, he discloses it to the enemy
11 as well.

12 But everyone would know that, if it's on
13 the internet, that it's a connection, you have log into
14 that particular site, you can have access to it. So
15 Pfc. Manning and a truck driver are no different.

16 Then you have got WikiLeaks or any other
17 media outlet. So disclosing anything to any media
18 outlet under the Government's theory that might put it
19 on the internet. You have basically where they all
20 meet. And that's how you indirectly aide the enemy
21 according to the Government.

1 So the important thing for the Article 104
2 offense is, this doesn't have to be classified. I know
3 the Court has said for classified there is some greater
4 protections that are put in place. But the information
5 doesn't have to be classified.

6 So if the Government's theory is correct,
7 that anytime a soldier, any soldier here talks to any
8 media outlet that might go on the internet and that
9 would involve information intelligence or whatnot,
10 that's somehow true, then you have indirectly aided the
11 enemy.

12 That's really what the Government argument
13 boils down. All their information centers in on
14 basically a negligence argument. He should have known.
15 He should have known. That is essentially their
16 argument for actual knowledge.

17 And they point to a ACIC document as the
18 provider of information for what he should have known,
19 and also as proof that WikiLeaks was not a news
20 organization.

21 So just looking at the unclassified now

1 portions of ACIC document, on Page 6, if the Court goes
2 there, you will see this passage where they talk the
3 fact that WikiLeaks supports the Supreme Court decision
4 of the unauthorized release of the Pentagon Papers of
5 Daniel Ellsberg, and they talk about a free and
6 unrestrained press.

7 And when they said they aim at maximum
8 political impact, they talk about why, transparency in
9 Government and having them accountable to the people.
10 That is the watchdog function of the press. That is
11 what the press is designed to do.

12 Page 7. WikiLeaks.org, staff members and
13 various authors and contributors have written numerous
14 news articles and posted the raw data. It goes on to
15 talk about that.

16 So the ACIC document they say they are
17 writing news articles. Sounds a lot like the Germans.

18 Page 9. The Court will find it talks about
19 the foreign staff writer for WikiLeaks.org, so staff
20 writer again, news organization, Julian Assange wrote
21 several news articles and co-authored other articles.

1 And they go on to talk about a particular item.

2 Again, even within the ACIC document
3 recognizing that WikiLeaks is a new organization, that
4 Julian Assange is one of their foreign staff writers
5 and that he's writing news articles.

6 Page 10. One of WikiLeaks' news articles
7 also discuss the use of IEDs. And they talk about how
8 that article was written and what it intends to do to
9 do a cost benefit analysis. Again, what hard hitting
10 news journalism would do.

11 What does the United States Government
12 spend its money on. Are you the taxpayer, getting your
13 money's worth. Page 10.

14 Page 12. Julian Assange has stated in his
15 news articles involving, and then it talks about the
16 story. Again, referencing him as a journalist clearly,
17 because that's who writes news articles.

18 Page 14. Again talking about WikiLeaks.
19 And in this instance here talking about a news article
20 written by them and their staff writers. So if one
21 would be reading a basic document, you would be clearly

1 believing that WikiLeaks is a news organization that
2 writes news articles.

3 Page 15. Again talking about WikiLeaks
4 writing a news article, but important here is that
5 their news articles was picked up by a variety of other
6 newspapers and wire services and other media
7 organizations. And then it talks about WikiLeaks
8 verifying information. WikiLeaks and some other news
9 organizations did attempt to contact (inaudible)
10 personally by email or telephone to verify the
11 information.

12 Such efforts by WikiLeaks to verify the
13 information are in contravention to stated policy.
14 They believe that WikiLeaks wouldn't be doing that.
15 Then they say that was a good thing to do, that this is
16 what you would anticipate from a news organization.

17 So reading the ACIC document you see even
18 within that they recognize WikiLeaks as a news
19 organization.

20 Continuing for that same thing on Page 16,
21 they say that even though they had an employee that

1 would be a credible source, again WikiLeaks tried to
2 verify, and the attempt to verify the information were
3 prudent and showed journalistic responsibility to the
4 newsworthiness for fair use of the classified document.
5 This is the ACIC document. Again, WikiLeaks, a
6 legitimate journalistic organization.

7 Now let's talk about Professor Benkler.
8 Professor Benkler got on the stand and he testified
9 about the ACIC document. As I said, his review of that
10 indicated that it was poorly written and researched.

11 He disagreed with ACIC document. He
12 testified that WikiLeaks does, in fact, verify
13 information before publication. And one of the key
14 facts that he's pointed out was the fact that so many
15 other organizations would love to point out when
16 WikiLeaks published something that was not true.

17 And he said that didn't happen. Less than
18 1 percent, I believe was his testimony, of information
19 posted ultimately was not quite accurate.

20 And now, according to Professor Benkler,
21 was an amazing fact showing that WikiLeaks does, in

1 fact, verify its information. It doesn't just post
2 anything and everything sent to it, as the Government
3 would suggest as the ACIC wrongly concluded.

4 Then what else do we know about WikiLeaks?

5 They received several awards recognizing their
6 journalistic endeavors. The 2008 (inaudible)
7 International News Media Award. This is a journalistic
8 organization clearly and the Government, of course,
9 ignores those facts.

10 Major Fein characterized the quality of
11 Professor Benkler's work yesterday suggesting that
12 Professor Benkler's work was not good. Well, first of
13 all, if the characterization of Professor Benkler's
14 work isn't good, how does that compare to Mr. Lewis,
15 the person that the Government relied upon solely for
16 valuation of information, a person who on his own
17 testimony said he did 70 percent of his work the week
18 before he testified. Not, you know, months before his
19 testimony. 70 percent of his opinion on information
20 was developed the week before he testified.

21 Professor Benkler merely is an expert, and

1 to impugn his work ignores the clear facts from his
2 testimony. And the only way you do that, and the
3 reason why you do that is because you are trying to say
4 WikiLeaks is not a legitimate news organization,
5 because that wouldn't fit within our story. We need it
6 to be a nefarious organization. We need it to be
7 hackers.

8 We need to argue that Pfc. Manning sought
9 out fellow like minded hackers and gave information to
10 an anti-Government, anti-United States organization and
11 he did that because he had no loyalty to our country,
12 no loyalty to the flag. He did that because he was an
13 enemy.

14 That's the argument that the Government has
15 to present in order to make their evidence make any
16 sense. But it doesn't stand up to any sort of
17 analysis.

18 And what do we know about the ACIC
19 document? The ACIC document didn't even know if the
20 enemy went to WikiLeaks. It has a question mark on
21 whether or not foreign intelligence services and enemy

1 would use WikiLeaks.

2 Intelligence gap. That's something you
3 never heard from Major Fein. He talked about the
4 presumption, the presuming, but he never talked about
5 the intelligence gap. The reason why he didn't talk
6 about that in the ACIC document is because they
7 identified whether or not there was an
8 intelligence gap, something we do not know.

9 All the Unit witnesses testified about what
10 an intelligence gap is. It's something that we don't
11 know, we need more information on to confirm. It's a
12 gap in our intelligence. Even Ms. Glenn finally got
13 around to saying, yes, it's something we don't know.

14 And that the United States Army and ACIC
15 after doing all their research, and we know from Ms.
16 Glenn when they do something, they reach out to
17 everybody to find any source to support their
18 documentation. They have access to everything. And
19 that entire research still listed this as an
20 intelligence gap. So, if the Army doesn't know, didn't
21 know that the enemy went to WikiLeaks, how would Pfc.

1 Manning be held to have actual knowledge?

2 We also, he didn't talk about the
3 assumptions that were made. They made several
4 assumptions with an ACIC document. And we all know
5 from the Unit witnesses that assumptions, again, are
6 stuff that we do not know. We are having to make an
7 assumption. And from that assumption we can say X
8 might be true or Y might be true. Assumptions are
9 things we don't know.

10 We know from the Unit witnesses there was
11 actually no training on what particular websites the
12 enemy might have gone to. That was nowhere to be found
13 in the AIT training. Nowhere to be found in his
14 training at Fort Drum. Nowhere to be found in his
15 training when he got to Iraq.

16 And then the Government argues the
17 presumption, it must be presumed that the enemy would
18 go to any source on the internet to find information.
19 This is a negligence argument. Similar argument might
20 be, if I leave my wallet outside the courtroom with a
21 \$20 bill hanging out of it, it must be presumed that

1 someone might take it. That's not a good idea to leave
2 it there. But just as likely, someone might pick it up
3 and hand it back to me. That might go to my
4 negligence. That doesn't go to my actual knowledge.

5 In this instance, giving something to a
6 legitimate news organization is, unfortunately or
7 fortunately, depending upon what side the fence you are
8 on, the way we hold our Government accountable. That's
9 not like leaving the wallet outside. That's giving
10 information to a legitimate news organization in order
11 to hold the Government accountable. The enemy may go
12 to that. But then the whole idea of Article 104 of
13 giving intelligence to the enemy is the idea you are
14 giving something that's helpful to the enemy.

15 And that whole idea, and all the cases that
16 kind of support that, we know you have the directly
17 giving information to the enemy where you are going to
18 the enemy saying here, and you get money or some sort
19 of benefit. Indirectly the way that makes sense, in
20 the one Civil War case the Government can cite of
21 giving information through a news print media in order

1 to show troop locations, that whole idea, that was done
2 in a secret way, is to give the information to the
3 enemy so that the enemy has it and can take advantage
4 of it. That is where it makes sense of some helpful to
5 the enemy.

6 Giving the information to the world, to the
7 public, to inform the public, does not give
8 intelligence to the enemy. What it does, is it says
9 this is the information. If it were helpful to the
10 enemy, and we thought it were, again, you would expect
11 Hall to do something, to do a rapid adaption, just take
12 it to a very logical common sense understanding.

13 If it were true that we had -- let's say in
14 a ground war and we are going to go into a particular
15 area at 0930 and we are going in this route of
16 approach. If that were the evidence, and that were
17 released, the only way that would help the enemy is if
18 we didn't know that the enemy had it.

19 The reason why you think about that, if
20 somebody gave that to the enemy, the United States Army
21 is going into a particular town at 0930 from this

1 direction, the enemy can take advantage of that, if we
2 do not know that they know that.

3 If we know they know that they know that,
4 because it's been blasted out for the world to know,
5 common sense would say that we are not going into that
6 town at 0930 now, because we know the enemy knows that.

7 We are not going to go from that route.

8 That's how you give intelligence to the enemy
9 indirectly that actually provides information to the
10 enemy. That's not this case.

11 All the forensics in this case prove that
12 Manning wanted this information to get out to the
13 public. He never discussed the enemy, wanting to get
14 information to the enemy.

15 The one quote from the Lamo chat that Major
16 Fein took out of context of, can make bank for China or
17 whatnot, look at that quote. That is Adrian Lamo
18 asking Pfc. Manning, what is your end game? And Pfc.
19 Manning saying, I want to give this information out, I
20 want to make a difference. And he says to Pfc. Manning,
21 or a spy, suggesting that Pfc. Manning could be a spy.

1 And Pfc. Manning says, no, I could never be a spy.

2 And then it's Adrian Lamo saying, you could
3 have sold this to China and made bank. Why don't you
4 sell it? It's not Pfc. Manning saying I'm going to sell
5 it to make bank.

6 All the forensics prove that he had a good
7 motive. His motive was to spark reforms, to spark
8 change, to make a difference. He did not have an evil,
9 a general evil intent.

10 You look at the circumstantial evidence
11 again for the 104 offense. The evidence of the path of
12 the intelligence to the enemy can be circumstantial
13 evidence to disprove actual knowledge. And the way
14 this gets to the enemy, and we look at Adam Gadahn,
15 really look at UBL, why they went to that information,
16 what sparked their determination.

17 Adam Gadahn again talking about trying to
18 get people to go there in order to give the
19 information.

20 That is circumstantial evidence that Pfc.
21 Manning did not have actual knowledge. Even the enemy

1 had to be told itself to go to this website.

2 And further proof of that, the Government
3 uses his training but his training is important. He's
4 a junior analyst. Still learning how to connect all
5 the dots. And several witnesses all talked about the
6 fact that he was a junior analyst. He was good at data
7 mining. He was bad at connecting the dots. He was
8 good at putting things on a chart and using D6A
9 programs, he was good at computers but he was bad at
10 creating an analytical piece.

11 And he was bad at that because of his
12 limited experience. He was bad at that because he was
13 a junior analyst. He didn't have very much experience
14 in garrison. Sergeant First Anica, and (inaudible)
15 talked about garrison as opposed to being deployed.

16 So you get back to what's the truth. What
17 is the actual ground truth based upon the evidence in
18 this case? And that's obviously a very important
19 decision because that will color the outcome in this
20 case.

21 Is Pfc. Manning somebody who is a traitor,

1 had no loyalty to this country or the flag and wanted
2 to systematically harvest and download as much
3 information as possible for his true employer,
4 WikiLeaks.

5 Is that what the evidence shows? Or is he
6 a young, naive with good intentions soldier who had
7 human life in his humanist beliefs center to his
8 decisions, whose sole purpose was, maybe I just can
9 make a difference, maybe this can make a change.

10 Which side of the version is the truth?
11 And we would ask the Court, when you look at the truth,
12 look at what he says and the time again when he has
13 nobody that he believes is watching him. The
14 Government made their comment of he had time to make up
15 his story. He didn't make up any story.

16 When he talked to Lori McNamara, when he
17 talked to Adrian Lamo, that was Pfc. Manning. When he
18 spoke to Press Association, that was Pfc. Manning.

19 Are there some things in there that don't
20 put him in the best of lights? Certainly. And you can
21 cherrypick those, I'm sure the Government will in its

1 rebuttal to try to cherrypick that and make us spin on
2 with that.

3 But when you read it in its context, that's
4 why it's important to read everything in context, when
5 you read it in its context, it's clear what the truth
6 is in this case.

7 And in this instance we are hoping that the
8 Court sees that as well. Thank you.

9 THE COURT: All right. That's enough.
10 Members of the Gallery, this is a Court of Law. I
11 would ask, please, that you keep your reaction muted.

12 Major Fein, how much time do you need? If
13 we start at 1500, does that work for you?

14 MR. FEIN: Yes, ma'am.

15 THE COURT: Are you sure? Is that enough
16 time for you to prepare?

17 MR. FEIN: Yes, Ma'am.

18 THE COURT: All right. Court is in recess
19 until 1500.

20 (Court recessed at 1:30 p.m.)

21

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